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### Legal Writing Scholarship: Point/Counterpoint

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## LEGAL WRITING SCHOLARSHIP: POINT/COUNTERPOINT<sup>1</sup>

BY JAN M. LEVINE AND GRACE C. TONNER

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### Introduction

Perhaps because the field of legal writing has now matured enough so that we professors constitute a critical mass of experienced teachers and scholars, we find ourselves frequently embroiled in debates about legal writing scholarship. What is it? Can we do it? Should we do it? Should it be considered part and parcel of our responsibilities as members of the law school world?

To help us better present our shared view that legal writing professors not only can but *should* produce scholarship, we sought first to take on the role of devil's advocate, presenting all the rationales we have heard from our colleagues as to why they do not produce scholarship. We would then respond to them. Once listed, we found that the reasons given were frighteningly similar to statements made by many of our students when we, as writing professors, ask them to do research and to write for our legal writing courses. We also found the statements were often echoed by doctrinal faculty members and deans who refuse to see legal writing professors as true members of the academy.

In this article, we offer seven reasons typically used to justify why legal writing professors do not write, and our responses.

### Reason #1: "I'm not smart enough."

(This is also heard as "I'm an *instructor*, not a *professor*.") Please look around your law school. Look closely at the students and the faculty, and consider if this reason makes any sense. If that does not work, and if they still overawe you, just take a random issue of any law review off the library shelves, and reconsider. With so many journals, and so many things to write about, there is always room for another article. Perhaps yours

<sup>1</sup> This article is a revised version of an address presented by the authors during the Legal Writing Institute Conference, Ann Arbor, Michigan, June 1998.

will be understandable and even used by judges and practitioners.

### Reason #2: "Writing is too hard and I would rather do other things."

This one is probably the one we hear most from students who just cannot understand the importance of our courses, particularly at schools that undervalue the course by their allocation of credit hours or by using some nonstandard grading scheme. If you teach legal research and legal writing, this statement means that your course and your career are probably useless. If you can ask students to do research and to write, to learn what a lawyer does for a living, and you still think that writing is too hard, then perhaps you should do other things for a living. But we think a better approach is to show that the cynical old homily—"Those who can, do; those who can't, teach"—doesn't apply to you. Instead, prove the truth of the better version as seen on a sweatshirt recently offered for sale by National Public Radio: "Those who can, do; those who can do better, teach."

### Reason #3: "The law school provides no support for scholarship."

(This is also heard as "They do not pay me enough to write.") Perhaps the school does not pay the legal writing faculty enough because it doesn't think they are capable of writing. Many doctrinal professors and law school administrators do not view legal writing professors as full members of the law school academy because we are considered categorically incapable of fulfilling one of the three functions of the "true professor's job" (teaching and service are the other two). If you can be a teacher—and probably a wonderful teacher—and provide service to the community and still find time to write, perhaps they have erred in their assessment of your abilities, your worth, and your salary!

While it is true that many legal writing professors are not paid at the same level as other law school professors, compare your salary with that of the faculty teaching writing in the English department, or with tenured professors in some liberal arts departments, or even with those laboring in elementary education, which is a job far more demanding than anything any of us do. Legal writing professors are often paid the same as they are, and the teaching loads for many of our non-law school colleagues dwarf those given to legal writing teachers. So it is all relative.

"If you can ask students to do research and to write ... and you still think that writing is too hard, then perhaps you should do other things for a living."



“Your insights into the writing process will be greater if you are an active writer, and your advice and suggestions to your students will be more valid.”

**Reason #4: “Teaching should be enough, and I have no interest in writing.”**

(This is also heard as “My students will not benefit.”) If you teach writing, then you should (and, indeed, must) write. Scholarship is the “coin of the realm,” and if you want to be seen as a real professor, then you must write. Your students do benefit because you are doing exactly what you are asking them to do: research and write. Scholarship feeds into teaching, and teaching supports scholarship, so trying to exclude one core function of a university professor from your job means that perhaps you are not a real professor. Are you what “they” say you are, or are you more?

**Reason #5: “My workload is too high and I have no time.”**

As noted earlier, measures of work are always relative. The same excuses are used when we try to find time to exercise, to read for pleasure, or to do anything else in our busy lives. So you say you cannot find one hour a day to write? True, it is tempting to invest all your spare time in your teaching, but it is also probably true (and seen as true by the other faculty, even if it is not) that you will be a better teacher if you produce scholarship. Your insights into the writing process will be greater if you are an active writer, and your advice and suggestions to your students will be more valid. Besides, you can economize and be more efficient by writing about your teaching, or by using the topics of your assignments as the subject of your own writing.

**Reason #6: “I cannot think of a topic.”**

Look at the agenda for any of the Legal Writing Institute (LWI) conferences, or the tables of contents of a few issues of *Perspectives: Teaching Legal Research and Writing*, and consider how much of what we are talking about should be written about. Furthermore, writing professors are always coming up with topics for students to write about, and thinking that we cannot do so for ourselves is ironic. If so many people can publish, so can you. You can write about what you teach, you can write about the profession, you can even write about scholarship! One of the authors of this article has even written about the difficulties of

## SOME CONCERNS ABOUT LEGAL WRITING SCHOLARSHIP

BY JAN M. LEVINE

These thoughts are my own; they are not something I have discussed with Professor Grace Tonner, but I have shared them with other legal writing professors. I want to share them further, with the readers and the publisher of *Perspectives: Teaching Legal Research and Writing*.

I am very proud of the strides our field and my colleagues have made in the past decade. Scholarship about legal writing has shown an exponential growth in quantity and quality, and our national conferences are increasing in number, length, and sophistication. Legal writing is a vibrant and dynamic field. However, although the years of legal writing teachers laboring in isolation are over, and mainstream law journals are publishing our scholarship, I fear we may be clinging too hard to our “oral traditions.” I am dismayed when we fail to do our research as well as we do our writing.

My main points are simple: (1) we often fail to cite and give due credit to prior sources in legal writing scholarship; and (2) our conference presentations are often incomplete. Articles about legal writing, no matter how short, benefit greatly from accurate and carefully chosen references to published scholarship about legal writing. Similarly, our conference proposals and presentations would improve if we would more carefully research the published literature prior to submitting proposals for presentations and then provide short bibliographies to those in attendance.

We are constantly reinventing the wheel, instead of figuring out how to make the vehicle move faster and more smoothly down the road. We can do this by learning from those who have already faced the same or similar issues and shared, in writing, their insights and inventions. If we do not act as other scholars do, we will only impede the growth and progress of new legal writing professors and lessen the impact of existing legal writing scholarship. Perhaps worse, we will also make it harder for doctrinal professors to appreciate the depth of knowledge, scholarly insights, and experience now possessed by those in our field.



Ironically, many new articles published in these pages often lack citations to earlier articles on the same or similar topics that appeared in this very journal. Perhaps this is because many new legal writing professors do not have access to back issues of some of our field's publications, such as *Perspectives* or the *Journal of the Legal Writing Institute*. Although many law school libraries have not maintained the newsletters and journals in their collections, the Legal Writing Institute has recently arranged for online access to its journal. The Institute is also striving to regularly publish proceedings issues to save at least some conference presentations for future legal writing teachers.

Perhaps it is time for West Group to publish a compilation of the entire production run of *Perspectives*, in paper and online. Although the editors annually provide an updated cumulative subject matter index to *Perspectives*,<sup>1</sup> actually finding back issues is not easy.<sup>2</sup> Furthermore, a library on Westlaw dedicated to legal research and writing would do much to advance a field upon which West and other publishers depend.

We must do as we beseech our students: fully research those subjects about which we write and speak, and provide attribution to the sources upon which we build our further thoughts and our future scholarship.

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<sup>1</sup> *Editor's Note*: For the latest cumulative index, see Frank G. Houdek, *Index to Perspectives: Teaching Research and Writing, Volumes 1-6 (1992-1998)*, 7 *Perspectives: Teaching Legal Research and Writing* 37 (1998).

<sup>2</sup> *Editor's Note*: A limited supply of back issues is available from West Group, which prints and distributes *Perspectives* as a service to the legal community. To request back issues and for information about subscribing, write or call Beckie Burmeister, West Group, Product and Client Communications, D5-C, E12-04, 610 Opperman Drive, Eagan, MN 55123, (651) 687-5702.

becoming tenured as a legal writing professor and the needs to accommodate the workload so legal writing professors can produce scholarship;<sup>2</sup> if that is not in vogue and postmodern, what is?

### Reason #7: "I would get no benefit from writing."

Writing will boost your self-esteem. Your teaching and writing will improve. Your colleagues will look at you differently, and perhaps you will, indeed, be different. It is ironic that our field, in which writing is the focus, depends so much on an oral tradition to pass on our hard-earned understanding and our approaches to teaching. We will all benefit from our writing, as will those who have not yet entered our field.

### Conclusion

Of course, we still haven't answered the fundamental question: "What is legal writing scholarship?" But we know that legal writing professors and other law professors do disagree about the answer to that question. So the task of answering it we leave to those teaching legal writing who write about our pedagogy, about legal writing, about our field, and about anything else that concerns us. Perhaps we best define legal writing scholarship in the simplest and most encompassing form as all scholarship produced by legal writing professors and others about legal writing; to be more pragmatic, it is what we publish. To paraphrase Descartes, "If we do not publish, we do not exist."

So write, even if it is just to respond to this article! Prove we exist.

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<sup>2</sup> Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 *J. Legal Educ.* 530 (1995).

"I am dismayed when we fail to do our research as well as we do our writing."