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FROM LEGAL WRITING TEACHER TO SUPERVISING ATTORNEY IN AN APPELLATE LITIGATION CLINIC: HOW I GOT MY LEGAL WRITING MOJO BACK

LUCILLE A. JEWEL[†]

Forty-two. His age had astounded him for years, and each time that he had sat so astounded, trying to figure out what had become of the young, slim man in his twenties, a whole additional year slipped by and had to be recorded, a continually growing sum which he could not reconcile with his self-image. He still saw himself, in his mind's eye, as youthful, and when he caught sight of himself in photographs he usually collapsed ... Somebody took my actual physical presence away and substituted this, he had thought from time to time. Oh well, so it went.¹

At mid-career and mid-life, we are often confronted with intense nostalgia for our lost youth and a certain degree of ennui about our present status. This essay is about trying something new mid-career, fighting professional burnout, and in the process, discovering novel approaches to law teaching. I have taught legal writing and other legal skills courses since 2004. I currently teach at the University of Tennessee College of Law. There is no greater venue for pursuing my love of the law than teaching students how to unravel and demystify the law's complexities. When we teach legal writing, we are teaching legal thinking; we are leading students through the gate of the profession.

All professional endeavors, done for long enough, carry a risk of burnout. However, because of the intense time and student contact required, legal writing carries unique risks of professional burnout.² The burnout comes from the the necessity of conveying quality feedback on pages and pages of draft papers and the one-on-one student contact necessary to help each law student move their writing forward. Some portion

[†] Associate Professor of Law, University of Tennessee College of Law. I would like to thank Professors Tanya Bartholemew, Suzanna Moran, Nantiya Ruan, Debra Austin, David Thomson, John Campbell, Tess Bruce, and Robert Anderson for hosting the One Day Legal Writing Workshop at Denver University Law School.

1. PHILIP K. DICK, *A Maze of Death*, in VALIS AND LATER NOVELS 9 (2009).

2. In this context, the concept of burnout is fraught, as it has been used by institutions to give legal writing faculty less pay and less job security than other types of law teachers. Mary Beth Beazely, "*Ridikulus!*": *Tenure-Track Legal-Writing Faculty and the Bogart in the Wardrobe*, 7 SCRIBES J. LEG. WRITING 79, 81 (2000). The argument is that because the burnout factor, we cannot expect legal writing to subsist as a long term career. *See id.* However, burnout should be considered a risk for all academic teaching, not just endemic in legal writing. *See* Jan Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 550 (1995) ("The possibility of burnout is real, but it is not inherent in the subject of legal writing.")

of the burnout may also derive from the fact that we are teaching in a closed universe, despite all efforts to develop writing problems as complex simulations. Thus, the end result is that we are not presenting our students with real clients with real problems.³ In this context of legal writing, the concept of burnout is fraught, as institutions have used it to give legal writing teachers less pay and less job security than other types of law teachers.⁴ The argument is that because the burnout factor, we cannot expect legal writing to subsist as a long-term career.⁵ However, burnout should be considered a risk for all academic teaching, not just endemic to legal writing.⁶ And finally, for those legal writing teachers who are working with less than optimal job security and salary, burnout might also be tied to these institutional issues.⁷

In the spring of 2015, I was wrestling with burnout and a general sense of mid-career malaise. I came into teaching after several years in New York City, practicing as a commercial litigator. I was lucky, in my practice, to work at a medium sized firm that recognized my competence and, accordingly, gave me substantive responsibility over cases early in my career. In contemplating my career last spring, I came to realize that I missed the practice of law—the adrenaline, the strategizing, the craft, and the rewards of serving clients in need. For quite some time, I had expressed interest in teaching at the University of Tennessee College of Law’s legal clinic, the longest running legal clinic in the United States. Last spring, there was a need for a full time faculty member to become the supervising attorney for the Appellate Clinic. I, along with an adjunct practitioner, would be leading the students in the clinic. I jumped at the opportunity.

What happened next was absolutely exhilarating. I have always maintained an active law license wherever I teach. I believe that practicing law is a great privilege and, despite my teaching career, I did not ever give up my law license. An active law license also confers great credibility with my students. I would advise any legal skills or legal writing teacher to not ever let your law license become inactive. In the summer of 2015, I applied for and gained admission to the Sixth Circuit Court of

3. One method for infusing more life into legal research and writing is to bring real life client interactions into the 1L writing classroom. This is, in fact, what Denver Law professor Nantiya Ruan and other innovators have successfully done. See Mary Bowman, Lisa Brodoff, Sara Rankin, and Nantiya Ruan, *Adding Practice Experiences to Legal Research and Writing Courses*, in *THE NEW 1L* (Eduardo Capulong, Michael Millemann, Sara Rankin, and Nantiya Ruan eds.) (Carolina Academic Press 2015).

4. Mary Beth Beazely, “Ridikulus!”: Tenure-Track Legal-Writing Faculty and the Bogart in the Wardrobe, 7 *SCRIBES J. LEG. WRITING* 79, 81 (2000).

5. *See id.*

6. *See* Jan Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 *J. LEGAL EDUC.* 530, 550 (1995) (“The possibility of burnout is real, but it is not inherent in the subject of legal writing.”)

7. Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?* 40 *ARIZ. L. REV.* 105, 118 (1998).

Appeals, and started looking for clients and cases to accept. In addition, I started preparing the seminar portion of the class, where students learn and practice appellate advocacy skills.

We accepted two cases. We received one case as a Sixth Circuit referral under the Criminal Justice Act.⁸ In this case, our imprisoned client (Mr. Client A) successfully obtained a Certificate of Appealability for his federal habeas corpus case, creating a limited issue concerning the statute of limitations under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). The Sixth Circuit's grant of a Certificate of Appealability rendered him eligible for representation under the Criminal Justice Act. The other case we accepted came from the University of Tennessee's immigration clinic. We agreed to represent a young man (Mr. Client B) who fled MS-13 gang violence in the Honduras, but whose asylum claim languished in the harsh procedural landscape of U.S. immigration law. The Clinic took on five students. Two students were assigned to Mr. Client A and three were assigned to Mr. Client B. The fall semester of the clinic was devoted to writing the briefs for the cases. The spring semester is devoted to preparing for oral arguments.

What follows below is a description of the lessons I learned as I supervised and taught in the Appellate Clinic this year, new wisdom relating to client relations, challenges in taking on real cases, successful teaching techniques gleaned from outside of legal writing "silos," and plans for the future. Thus far, this experience has provided immense rewards in terms of my mindset and professional development. I highly encourage other mid-career teachers to try something new, find wisdom in unexplored places, eradicate the drudgery of teaching the same thing day after day out, and transform teaching into the revitalizing life journey it is meant to be.

CLIENT RELATIONS

We began our representation of Mr. Client A by driving from Knoxville to the prison, so that we could interview him and establish a rapport, before beginning work on his case. I was concerned about the interview—concerned about whether I would be able to establish credibility with Mr. Client A, gain his trust, and convey our commitment to zealously advocate for him. My concerns were unwarranted. My students did a phenomenal job actively listening to Mr. Client A, his story, and his goals for the representation. It was invigorating to see how active listening, a longstanding hallmark of client counseling pedagogy,⁹ generated

8. 18 U.S.C. § 3006A. Pursuant to the Criminal Justice Act, the Sixth Circuit appoints appellate counsel for indigent clients with active appellate cases. See Criminal Justice Act Plan, United States Court of Appeals for the Sixth Circuit, http://www.ca6.uscourts.gov/internet/forms/documents/CJA_Plan.pdf.

9. See, e.g. ROBERT F. COCHRAN, JR. ET AL., *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 29–33 (Lexis 2d Ed. 2006).

an authentic human connection and trust, despite the age, class, and racial difference existing between Mr. Client A and ourselves. Their success in connecting with their client thrilled the students. The experience gave shape to their burgeoning professional identities as service-oriented lawyers.

My academic scholarship also helped establish my credibility with Mr. Client A. On the prison Lexis system, Client A had researched me prior to the interview. Through that search, he located an article I had written on visual advocacy and the various court citations to it.¹⁰ That fact was incredibly meaningful. I have long argued that there is a symbiotic relationship between legal scholarship and skills teaching.¹¹ The experience of Mr. Client A perceiving me as a credible advocate because of my scholarship reinforces this view.

The interview with Mr. Client B was more challenging. There were some missteps, which the students learned from. All three students wanted to be involved. Because of the language differences, we also needed a translator. There were three students, one translator, and myself in the room, along with Mr. Client B and his young child. The students all wore suits; Mr. Client B, who works in construction, came to the interview in his work clothes. Unfortunately, in this setting, the interviewers did not mirror the interviewee,¹² creating an awkwardness that prevented the students from connecting with the client. We all learned from the experience. Eventually, one of the clinic students was able to generate a closer connection to Mr. Client B through one-on-one conversations.

CHALLENGES – ANXIETY AND WORRY

In terms of being the lead attorney on two Sixth Circuit cases, I predicted that my years of teaching legal writing and advocacy would make me an excellent lawyer, better than I was in practice. My knowledge gained from teaching would also complement my teaching in the clinic. I was not wrong in this regard, but there were some challenges that I did not foresee. One of the greatest challenges was the emotional toll these cases took on me. Mr. Client A's case created psychological intensity because a man's liberty was at stake. I also worried deeply about the very

10. Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISCIPLINARY L. J. 237 (2010) (quoted and cited in *In Re Glassmann*, 175 Wash. 2d 696 (2012) and *Watters v. State*, 313 P.3d 243, 248 (Sup. Ct. Nev. 2013) (both decisions granting defendant a new trial because of the prosecution's use of improper and overly inflammatory visual arguments)).

11. "Legal skills professors who engage in scholarship are not some unnatural combination of yin and yang, but rather capitalize on unique synergies integral to the production of well-rounded, practice-oriented, and professionally-minded attorneys." Lucille A. Jewel, *Tales of a Fourth Tier Nothing – A Response to Brian Tamanaha's Failing Law Schools*, 38 J. OF THE LEG. PROF. 125, 142 (2013).

12. In client counseling, mirroring is the practice of the interviewer representing the interviewee in terms of dress, body language, and other aspects of non-verbal demeanor. See Cochran et al., *supra* note 9, at 35.

real prospect that Mr. Client B might have to leave his wife and children in the U.S. and again confront the hostile MS-13 gang in the Honduras, which has already killed his younger brother and close friends.

The worry and anxiety presented a major difference between teaching simulated skills courses and doing the real thing. When you are teaching legal writing using hypothetical problems with hypothetical clients, you do not lose sleep at night worrying about whether Blair W. used a deadly weapon when she struck Chuck B. with her high heeled shoe. In seguing from supervising the representation of fictional clients to real clients, I did lose sleep over the cases, anxious and worried that we would miss something, not include something, or worse, waive something in constructing our arguments. I recalled this feeling from years ago, back in practice.

In a sense, the emotional and psychological aspects of representing clients creates necessary energy. It creates the fire and passion to do everything possible to advocate on the client's behalf. As a teacher, the psychological aspects of this experience also brought me closer to members of the bar (and bench). The practice of law is an intensely stressful job, a point that academics like myself should never forget.

SUCCESSFUL TEACHING TECHNIQUES

Every week, the professors and students meet in a seminar setting to learn and apply appellate advocacy skills and discuss developments in the cases. In preparing to teach in the clinic, I brought a host of legal writing lessons that I have used over the years in my advanced appellate advocacy and other upper level writing courses. But I also researched and adopted one of the signature pedagogies for clinical law teaching—rounds—which turned out to be an immensely useful structure for student work, a tool that I plan to adopt and use in my legal writing classes. Thus, the greatest lesson I learned in preparing the classroom component of the Appellate Clinic was the value in finding new wisdom outside of our professional silos.¹³

I began the classroom component of the Appellate Clinic began with a big picture overview, providing students with an understanding of clinic goals and expectations and operating procedures. We then covered aspects of appellate procedure (such as the Federal Rules of Appellate Procedure), legal ethics issues related to appeals, and technical skills necessary for drafting professional appellate briefs. Then, the class moved into specific skillset areas, with lessons on syllogistic reasoning, statutory interpretation and construction, methods of constitutional anal-

13. See Brad C. Hayes, *The Curse of Silo Thinking*, ENTERPRISE RESILIENCE MANAGEMENT BLOG, http://enterpriseresilienceblog.typepad.com/enterprise_resilience_man/2010/01/siloed-thinking-can-prove-devastating.html (last visited Jan. 20, 2015) (arguing that keeping information bound up in departmental silos is counterproductive).

ysis, and advanced persuasion skills such as storytelling, developing a theme and theory, and presenting precedential authority effectively. The last one-fourth of the class was devoted to study of and student presentations on master briefs that changed the world. As our text, we used Linda Edwards's masterful text, *Readings in Persuasion: Briefs that Changed the World*,¹⁴ which contains background information on several key briefs, along with the briefs themselves (on the book's companion website).

In terms of teaching success, the following advanced legal writing lessons were among the course's greatest hits:

- **Trivia contest** organized around the Sixth Circuit's Rules on Procedure and Briefing – this showed students that “the devil is in the details” with respect to formatting rules and appellate filing deadlines.

- As a way of teaching **statutory interpretation**, I used the Fun Fair Park cases, two cases that evaluated whether or not a Louisiana amusement park was subject to the Civil Rights Act of 1964.¹⁵ Using several canons of statutory construction, the District Court decision, Miller v. Amusement Enterprises, 259 F. Supp. 523 (E.D. La. 1966) held that the park did not fall within the statute. But on rehearing, the Fifth Circuit reversed, finding that the park did fall within the parameters of the statute. Miller v. Amusement Enterprises, 394 F.2d 342 (5th Cir. 1968). I give the students the District Court decision, and then have them draft arguments they would use to appeal it.

- I emphasized **the syllogism** throughout the semester, as a way to force students to distill their arguments down to the studs. I had them extrapolate the syllogism in the question presented in petitioner's brief filed in Brown v. Board of Education and then showed them Bryan Garner's “deep issues”¹⁶ method of drafting a syllogistic question presented.¹⁷ 347 U.S. 483 (1954).

- To teach **storytelling**, I assigned Ken Chestek's article, *The Appellate Brief as Story*, 14 J. LEG. WRITING INST. 128 (2008) as well as the article by Ruth Anne Robins and Bryan J. Foley, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Sections*, 32 RUTGERS L.J. 459 (2000-2001). Then I had the students complete through a worksheet designed to help them develop the plot line and characters within their brief.

14. LINDA EDWARDS, READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD (Wolters Kluwer 2012).

15. I must give credit to Professor Kathleen Burch of Atlanta's John Marshall Law School, who introduced me to these two cases as a tool for teaching statutory construction.

16. BRYAN GARNER, THE WINNING BRIEF 85–91 (Oxford Univ. Press 2004).

17. For other lessons on syllogisms, please see my article *Old School Rhetoric and New School Cognitive Science: The Enduring Power of Logocentric Categories*, 13 LEGAL COMM. & RHETORIC: J. ALWD __ (Forthcoming 2016).

My best teaching moment in the class came when I had my students perform “rounds,” a signature pedagogy in clinical legal education.¹⁸ In rounds, a concept borrowed from medical education, students discuss their cases with each other and benefit from the professional expertise of the other students and professors in the room. Sometimes rounds take on a problem solving structure, where the students fully describe a problem they are facing and then collectively brainstorm possible solutions. At other times, rounds can be conducted as more structured exercises.¹⁹ For my clinic class, I used the rounds concept as a way to generate feedback on the students’ outlines of their arguments. I required each student to stand up and orally deliver the substance of their outline to the class. In response, myself, my co-teacher, and the other students asked questions, sought clarification, and made other suggestions for improving the structure and flow of the outline. As an exercise, this was absolutely electric! In the role of both presenter and commentator, the students were thoroughly engaged in the process of constructing the most effective argument possible.

With rounds, I discovered something new from different corners of legal education. As testament to how information can become locked up in silos, before entering my work with the Appellate Clinic, I had never heard of rounds. But now, I see that it is an extremely valuable tool, helpful for generating collective and collaborative wisdom. I plan to use this concept when I return to teaching legal writing, next year. In legal writing, we have our own signature approaches to teaching and learning (student conferences, rewrites, etc.) which have evolved over time and work quite well. The lesson here is that we should be willing to look outside our own discipline for innovative ideas that we might adapt to improve our teaching.

PLANS FOR THE FUTURE

This semester, I will continue to lead the Appellate Litigation students as we prepare for oral arguments, which have been granted in both cases and now scheduled for March 2016. Next year, I will return as the supervising attorney in the Appellate Clinic and will also teach Legal Writing in the second semester, which I am elated about. I have been rejuvenated with the energy that comes from stepping back into the practice of law. I am excited about the synergies between clinical teaching and legal writing teaching. I got my legal writing mojo back.

18. Susan Bryant & Elliot S. Milstein, *Generating Conversations: Planning and Facilitating Rounds*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 113–149 (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck eds., Carolina Academic Press 2014).

19. See *id.* at 139–140; Elizabeth B. Cooper et al., *Rounds Essays*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 18, at 151–167 (discussing various structures that rounds might take).