



A. Munen 

Cooperation, Not Collision: A Response to *When Worlds Collide*

Tracy Bach*

What would happen if a rogue planet flew into our solar system and slammed into the Earth? The 1951 film *When Worlds Collide* recounts the travails of Dr. Cole Hendron, a scientist who warns the United Nations about the impending collision but is not believed.¹ Undeterred, he begins building an "ark" privately financed by a wealthy industrialist so that a few selected individuals (including the self-interested philanthropist) may escape to the planet Zyra and save the human race. The ship's construction begins a race against time, with governments at first denying the pending catastrophe, then later building their own rival ships. As the point of impact approaches, Hendron loads his ship with food, supplies, and a small group of people chosen by lottery. In the final hour, many of the lottery losers riot and try to force their way aboard. To lighten the spaceship, Dr. Hendron stays behind at the last moment. His sacrifice proves pivotal, for the ship runs out of fuel prematurely and barely manages to land on Zyra. Fortunately, when the passengers disembark, they find the new planet hospitable.

When Worlds Collide, the Legal Writing, Reasoning and Research Section Program at the 2007 Association of American Law Schools (AALS) conference, explored the intersections between legal writing and clinical education while tacitly asking what would happen if a rogue (clinical education) planet flew into our (legal writing) solar system. Professor Phil Meyer, the program chair, introduced the panel by noting that over twenty years ago, New York University Professor Anthony Amsterdam anticipated that the two disciplines would merge in the 21st Century. Yet, as Phil observed, despite a shared emphasis on pedagogy and a tendency to teach similar skills in similar ways, legal writing teachers and clinicians "often seem to inhabit separate institutional worlds."² But the published literature,³ the results of a 2006 survey conducted by the Legal Writing Institute (LWI) Committee on Cooperation Among Clinical, Pro Bono,

* © Tracy Bach 2007. Professor of Law, Vermont Law School.

¹ Wikipedia, *When Worlds Collide*, http://en.wikipedia.org/wiki/When_Worlds_Collide_%28film%29 (last updated June 10, 2007).

² Philip N. Meyer, *When Worlds Collide: Exploring Intersections Between Legal Writing and Clinical Pedagogy, Scholarship, and Practice*, 4 J. ALWD 1 (2007).

³ See e.g. Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 Clin. L. Rev. 441 (2006); Miki Felsenberg & Luellen Curry, *Incorporating Social Justice Issues into the LRW Classroom*, 11 Persps. 75 (Winter 2003); Brook K. Baker, *Incorporating Diversity and Social Justice Issues in Legal Writing Programs*, 9 Persps. 51 (Winter 2001); Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. Pub. Int. L.J. 429 (1999).

and Legal Writing Faculty,⁴ and the Section Program itself suggest a change in course. Are we heading for a collision? Will we compete against one another to build an ark to a new, welcoming planet or find common ground and work together?

The first two panelists, Professors Michael Millemann and Phyllis Goldfarb, described courses at their schools that exemplify cooperation, not collision, between clinical education and legal writing. At the University of Maryland School of Law, Professor Millemann co-teaches second- and third-semester writing courses that use actual legal work to create research and writing assignments. Third-semester students learn appellate advocacy via a real post-conviction relief case, while second-semester students learn trial level research, analysis, and writing via police brutality cases and a civil right-to-counsel reform project.⁵ At Boston College Law School, Professor Goldfarb added a clinical dimension to her Death Penalty seminar by having her students research and write a petition for writ of certiorari to the United States Supreme Court on behalf of a death row inmate seeking relief from an adverse decision by a state supreme court after a direct appeal.⁶

Both approaches integrate legal writing with clinical learning but have different starting points: Professor Millemann's brings the clinical planet into the legal writing solar system while Professor Goldfarb's pulls legal writing into the doctrinal orbit. Regardless, they both seek to achieve similar goals, including motivating students via real-world work; teaching them to develop and exercise their judgment via indeterminate problem solving; and bringing pro bono work — and the professional obligation to perform it — into the mainstream. Notably, both of these courses turn on the integrated skill sets that the teachers bring to the classroom: Professor Millemann, the experienced clinical teacher, paired up with Professor Steve Schwinn, the director of Maryland's legal writing program, while Professor Goldfarb wishes she had collaborated with a legal writing professor.⁷ These two examples underscore Dean Darby Dickerson's exhortation that clinical and legal writing professors should collaborate to avoid the "silo effect" of each group keeping information and resources to itself.⁸

The discussion of indeterminacy, and a resulting lack of control, sparked many questions from the audience about how to provide an "even" learning experience for legal research and writing (LRW) purposes when using "live"

⁴ See Sarah E. Ricks & Susan C. Wawrose, *Comment: Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty*, 4 J. ALWD 56 (2007). In fact, this Committee's very name suggests a changing environment.

⁵ Millemann & Schwinn, *supra* n. 3, at 472.

⁶ Phyllis Goldfarb, *So Near and Yet So Far: Dreams of Collaboration Between Clinical and Legal Writing Programs*, 4 J. ALWD 35 (2007).

⁷ *Id.*

⁸ Darby Dickerson, *Building Bridges: A Call for Greater Collaboration Between Legal Writing and Clinical Professors*, 4 J. ALWD 45 (2007).

cases. The idea of using a real case, with all of its inherent unpredictability, gives pause to many professors who have traditionally used carefully crafted simulations to teach research, analysis, and writing. I empathize with this discomfort, recalling well my own misgivings when I began using a method called problem-based service learning (PBSL) in my second-semester LRW classes four years ago. PBSL is a form of teaching that encourages students to use their academic learning to solve a community problem; while some service learning models focus predominantly on volunteer work, PBSL focuses more closely on academic goals. Law students come to our classrooms having experienced PBSL in their undergraduate courses, for colleges and universities have increasingly used real-world problem solving in their courses for the past ten years.⁹ PBSL resulted from research showing that “what is learned depends on how it is learned. Separating content from context simply doesn’t result in successful learning.”¹⁰ By organizing newly assimilated information into patterns and connecting them to prior knowledge and experience, the learner constructs knowledge in a meaningful context. Or as Professor Carrie Menkel-Meadow pithily summarized during the AALS Section Program, “involve me and I will learn.”

My second-semester legal writing course is grounded in environmental health law, which regularly brings me into contact with local non-profit organizations and government agencies seeking some form of legal research assistance. This year, for example, my students researched and wrote memoranda assessing the feasibility of bringing a civil action on behalf of a Vermont child who suffered from lead poisoning. The pro bono goal of this writing project was to provide the analytical foundation for a case of first impression which could be brought by a public interest attorney short on research assistance. By developing their legal research, analysis, and predictive writing skills while working to solve a real problem for a local non-profit organization, these first-year students learned 1) the substance of environmental and public health laws addressing lead poisoning; 2) the skills of research and analysis of federal and state statutes, regulations, and cases; and 3) the power of their legal skills and the gratification of using them in the service of others. Students find the research and analysis challenging, but rewarding. Comments like “I have developed a sense of ownership of the project and I find myself working hard because my work will impact real people” regularly appear on course evaluations.¹¹ Importantly, by grappling with a live case with messy facts and imperfect law, my students come

⁹ See e.g. Patricia A. Connor-Greene, *Problem-Based Service Learning: The Evolution of a Team Project*, 29 *Teaching of Psychol.* 193-197 (2002); Elayne J. Shapiro, *Problem-Based Service-Learning: A Pilot Study in Public Speaking*, http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/27/ee/67.pdf (November 2002).

¹⁰ Rick Gordon, *Problem Based Service Learning: A Field Guide for Making a Difference in Higher Education* 4 (2d ed., Antioch New England Graduate School, Education by Design 2000).

¹¹ Tracy Bach, *Necessity is the Mother of Re-Invention*, 18:2 *The Second Draft* (newsltr. of the Leg. Writing Inst.) 3 (June 2004).

to understand how one both thinks like a lawyer and acts like one. As Professors Millemann and Schwinn put it, students are introduced “to the dialectical process that good lawyers use to develop, test, refine, and eventually select legal arguments.”¹²

Embracing this indeterminacy rather than trying to shut it out begins to address Professor Kate O’Neill’s concern that LRW courses have become largely responsible for the teaching of traditional legal reasoning and legal methods. Professor O’Neill took a historical look at contracts casebooks and observed that modern authors have edited cases to focus on determinate rules for each doctrinal point, making it less necessary for students to engage in such skills as case synthesis. Over time, Professor O’Neill argues, the academy has assigned the teaching of legal reasoning skills to the legal writing classroom. LRW teachers, in turn, by carefully constructing “canned” problems and focusing on a mechanical application of the formulaic reasoning paradigm, may fall into a trap of focusing on neoclassical reasoning techniques to the exclusion of other, equally important lawyering skills.¹³ By drawing from each other’s teaching rather than moving along parallel tracks, legal writing and clinical professors appear poised to offer law students a new context for successful learning.

Reinforcing arguments for collaboration, the Carnegie Foundation for the Advancement of Teaching reported in January 2007 that the current law school curriculum leaves a gap between teaching students to think like lawyers and showing them how to use their analytical skills in the complexity of practice.¹⁴ To remedy the disjuncture, the authors of *Educating Lawyers: Preparation for the Profession of Law* call for “a dynamic curriculum that moves [students] back and forth between understanding and enactment, experience and analysis.”¹⁵ Specific recommendations include 1) integrating lawyering skills, legal analysis, and development of professional identity from the start of law school, 2) supporting faculty efforts to work across the curriculum, and 3) making better use of the second and third years.¹⁶ In the end, the report concludes that legal education should seek to unite “the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice.”¹⁷

These proposals build on prior empirical research and professional self reflection. In 1992, the ABA’s MacCrate Report emphasized that legal writing, analysis, and research are core legal skills and criticized law schools for giving skills education short shrift.¹⁸ The most recent results of the Law School Survey

¹² Millemann & Schwinn, *supra* n. 3, at 445.

¹³ Kate O’Neill, *But Who Will Teach Legal Reasoning and Synthesis?* 4 J. ALWD 21 (2007).

¹⁴ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 188 (Jossey-Bass 2007).

¹⁵ *Id.* at 197.

¹⁶ *Id.* at 12-14.

¹⁷ *Id.* at 12.

¹⁸ ABA Sec. Leg. Educ. & Admis. to the B., *Legal Education and Professional Development — An*

of Student Engagement (LSSSE) found that students who participate in clinical and field experiences or who do pro bono work report more gains than their peers in speaking and writing proficiency, thinking critically and analytically, and solving complex real-world problems.¹⁹ The perpetual question is how to motivate the legal academy to act on what it has learned about more effective legal education.

Certainly an impending collision would move things along. The documentation of increasing dissatisfaction among students — about little contact with professors, unsatisfying classroom experiences in the second and third years, and mounting debt load — adds fuel to the fire already lit by the bench and bar about the disconnect between legal education and law practice. But the collision of clinical and legal writing universes hinted at by the program's title turns out not to be the stuff of 1950s sci-fi drama. Rather, as each panelist showed in his or her own way, it is the friction between academic and practice cultures that provides the impetus to act. There have been plenty of warnings. Like Dr. Hendron, legal writing and clinical professors have been in the forefront of taking a hard look at their legal education planet. This program's speakers and the audience's response to them provided thoughtful insights into how and why we might cooperatively construct curricular vehicles that take learning the law to a new place. The good news is that no lottery keeps us from joining in on the ride.

Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (ABA 1992) (referred to as the "MacCrate Report" because the chair of the task force was Robert MacCrate).

¹⁹ *Engaging Legal Education: Moving Beyond the Status Quo*, 2006 Annual Survey Results of the Law School Survey of Student Engagement, http://nsse.iub.edu/lssse/2006_Annual_Report/pdf/LSSSE_2006_Annual_Report.pdf (2006).