

Reflections, Remembrances, and Mimesis: One Person's View of the Significance of the 25th Anniversary of the Founding of the Legal Writing Institute

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I. INTRODUCTION

In a planning meeting for the 2009 Mercer Law Review Symposium celebrating the twenty-fifth anniversary of the founding of the Legal Writing Institute (LWI), a colleague of mine asked what I thought the significance of that event was to legal education. Not having a pithy and

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erudite answer ready at hand, I simply said “considerable.” This answer seemed to me self-evident; the LWI had, after all, changed the way legal writing is taught in American law schools. It had also worked hard—along with the Association of Legal Writing Directors (ALWD)—to increase the pay and status of legal writing professors across the nation. Members of the LWI had, during that quarter century, also published hundreds and hundreds of articles and books on topics related (some closely, some not) to legal writing specifically and legal analysis and communication more generally. These facts seemed to me to be fairly obvious, even to one who did not teach in the field, but my colleague had a somewhat confused and slightly skeptical look on his face. I wondered whether I needed to explain all this to him; I wondered if he really did not understand the importance the LWI had played in marshalling the efforts of countless individuals to make legal writing and communication courses in American law schools better, and in so doing, making the entire enterprise of legal education more sound. I know with conviction that my colleague supports the cause of legal writing, and I strongly suspect that he was one of the early supporters of the idea to have the Mercer University Walter F. George School of Law become the current LWI host school. Yet there was that look. I let it pass at the time, but over the weeks between this conversation and the Symposium, the feeling remained that I needed to say more—not just to my colleague, but to anyone who was curious and ambivalent about the importance of the LWI.

About this same time, I was rereading several essays by the German literary critic and sociologist Walter Benjamin. I had read much of Benjamin’s work while I was in graduate school, and I often try to sneak in some of his literary essays when I have a spare moment. As I flipped through my books, I began to realize that several themes appearing frequently in Benjamin’s works were hovering around my thoughts regarding the conversation I had with my colleague. This realization gave me some points of locus on which to rest my views concerning the significance of the founding and continuing development of the LWI. Specifically, Benjamin’s views on reflection, remembrance, and mimesis resonated with my thoughts concerning the importance of having an institution like the LWI.

In Benjamin’s work, *reflection* refers to the act of reconstituting in one’s mind the events (often discursive) of the past and drawing some importance or inspiration or guidance from them. *Remembrance*, in the lexicon of Benjamin’s work, refers to the act of memorializing something in such a way that the act of memorialization itself carries with it a cultural or intellectual permanence. Memorialization makes the ephemeral concrete and real. Finally, Benjamin’s conception of

mimesis—the faculty of mimicking things in order to show the intellectual connection between them—was an important, if overlooked, part of Benjamin’s corpus. All of these themes bring home to me why it is that the LWI has been so vital to the development of the field and to legal education in general. Much to my surprise, these themes gave me a much more complex view of the existence of the LWI and the role it plays in the continuing evolution of legal education in the United States. I am, let there be no doubt, a fan of the organization and those individuals who have worked so hard to make LWI the entity it is today. Yet after thinking about these themes, and after reading more of Benjamin’s work and the work of his interpreters, I have been faced with a moment of self-reflection and critical evaluation.

In what follows I will briefly describe my thoughts on the significance of the founding and continued work of the LWI. As a vehicle for these thoughts, I will use the themes of reflection, remembrance, and *mimesis* that I have drawn from Benjamin’s work. At one level this is, of course, a celebration of the LWI and its many fine accomplishments. Such a celebration is just and proper. At another level, however, my thoughts urge me to be somewhat self-conscious and self-critical. I do this, not just for myself, but for those of us in the field and for those of us who wish for the continuing development of educational method in law schools in the United States. Let me begin by starting with reflection.

II. REFLECTION

When we engage in the act of reflection, we are both literally and figuratively reconstituting our thoughts and impressions about an event or occurrence. It is these reconstitutions that give us hope, drive our inspirations, and provide guidance for us as we travel the road ahead. We very often engage in these reflections by telling stories. We create narratives that are meant to account for our reflections of what happened. These are, in effect, the histories that we recount to one another. Such histories can be both instructive and inspiring. In the movie *Amistad*,¹ for example, Anthony Hopkins portrays former President John Quincy Adams, who represented the Amistad Africans before the United States Supreme Court. During his oral argument, Adams reflects upon—calls upon—the history of his predecessors (including his father John Adams), ending by saying “who we are is who we were.”² By this he meant to evoke the spirit of freedom that his forefathers had come to represent. I suppose many of us feel this way

1. *AMISTAD* (Dreamworks Pictures 1997).

2. *Id.*

to one degree or another. We have the feeling of coming from somewhere, representing something, and being somebody. These feelings are often constituted in our reflections. In some important way, then, we gain strength and inspiration from such reflections.

But our reflections can also be self-serving and inaccurate. This is especially true if we are the one telling our own stories. As we reflect on our own role in events, there is always the possibility of self-aggrandizement, mistaken perception, and conflation. Psychologists call this “confabulation.”³ I do not mean to suggest that most of us lie about our role in the reconstitution of events that we reflect upon. This is not about purposeful falsehoods. What I am suggesting here is that we can, and often do, modify—unconsciously and innocently—the size of the fish that got away. As a literary critic, Benjamin would say that the author’s reflections are drawn inextricably and undeniably from his or her own subjectivity. This is why some theorists have suggested that we ought to “leave history to the historians.”⁴

So what does all this have to do with the significance of the founding of the LWI twenty-five years ago? It simply means that we should be more conscious of the complexity of our reflections. It is surely the case that we ought to think about, discuss, and celebrate the curious and unexpected course of events that culminated in the founding and later development of the LWI. That is why it is both fitting and proper to have a symposium related to those founding events at the current home of the LWI. We should celebrate the fact that the LWI has had such a formative and nearly universal impact upon the landscape of legal education. This impact, from the development of a curricular model that is now being lauded by both the Carnegie⁵ and Best Practices⁶ studies, to the perpetual struggle for both pay and status equality within the academy, and finally to the mentoring of nascent scholarly voices, deserves to be not only reflected upon but celebrated. The many people who played a role in this process deserve to be lionized. It makes sense, then, that the founding of the LWI will be recognized with a year-long

3. See generally German E. Berrios, *Confabulations: A Conceptual History*, 17 J. HIST. NEUROSCIENCES 225 (1998).

4. THEODORE S. HAMEROW, REFLECTIONS ON HISTORY AND HISTORIANS 13 (1987) (internal quotation marks omitted) (quoting Hans Meyerhoff, *History and Philosophy: An Introduction*, in THE PHILOSOPHY OF HISTORY IN OUR TIME 1, 23 (Hans Meyerhoff ed., 1959)).

5. See WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 104–11 (2007).

6. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 109 (2007), available at http://www.law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf.

series of events culminating in an extravaganza (if I know Mark Wojick) at the 2010 Biennial Conference of the LWI in Marco Island, Florida.

Anyone who is even remotely interested in the impact of legal writing instruction on the formation of lawyers in the United States should draw both inspiration and satisfaction from these reflections. All of the individuals who participated in this Symposium have unique voices in the dialogue about what the field of legal writing entails. They were, in fact, chosen to participate in this program because of the perspectives that they bring to the table. From the views of the various founders from schools all over the United States who helped form the LWI, to the current leadership of that organization, what we know about the LWI from its infancy, to the prominent role it plays in legal education at the dawn of the twenty-first century, our understanding of the activities and importance of the LWI have been largely formed by the narratives of these individuals. So, events like this play an important role in the conceptualization of the field. It is a way of passing the narratives of the organization from one generation to the next.

But even as we celebrate these events, we should be careful not to lose perspective. The field of legal writing has come a long way in the twenty-five years since the LWI was founded. There is no doubt about that. There can also be no doubt that the individuals who are celebrated with awards and lionized with stories about their role in the development of such an important entity have played a vital and important role in this trek. But for every individual who speaks at a symposium and gives his or her perspective or narrative about the meaning of the LWI, there stand ten or twenty or one-hundred behind him or her who are equally as vital in their own understanding and contributions.

I make this point not because I believe that those people who are recognized for their achievements are undeserving (they surely are deserving!), but because when we focus on them, we lose sight of the fact that their perspectives (captured in their narratives, their reflections on the history of the field, and the institution itself) are inextricably tied up with their own subjectivity. The speakers at the Mercer Law Review Symposium are renowned in their knowledge of, and contributions to, the field of legal writing. But their narratives are limited by their perspectives. To tell the story of the LWI, countless members would have to contribute to the narrative. A narrative of one person is interesting—a reflection of the memories and perceptions of that individual. It is, necessarily, autobiographical, with all the attendant limitations of that genre. Let us not forget, however, the contributions of, and the reflections of, those who were not here to contribute to the narrative—those whose reflections were not captured and whose voices are not included in the sanctioned history of the LWI.

As I read Benjamin's essays on perspective and reflection, this point was brought home to me. It is an issue that we should not dismiss lightly, especially given the accusations of cliquishness and insularity that have sometimes been leveled at the LWI. I do not mean to assert the truth or falsity of these accusations, but only to remind us that we must try to be more inclusive in all our reflections. For it is only through such inclusion, through the expansion of what the history of the LWI might entail, that we can get a fuller sense of what the significance of its founding might be. While the reflections of those who played a role in the formation of the LWI might be fascinating, I am more interested in knowing where we go from here. "Who we are is who we were" doesn't quite capture the proper perspective. I think "who we are is who we want to be" would be a better mantra. If I am right, we should celebrate the reflections of "who we were," yet not let them limit us. We must continually urge the development of "who we want to be." I strongly suspect that we will one day realize that who we want to be is not who we were.

III. REMEMBRANCE

Members of the legal writing community across the country have been diligent to memorialize the accomplishments of both individuals and the professional organizations⁷ that have grown up around the field in the last quarter century. Memorializations are ways of casting the reflections of those who have unique contributions into the firmament. This is a way of giving permanence and recognition to the reflections and narratives I discussed above. In fact, reflection and remembrance are intricately linked for Benjamin. Memorials—or as Benjamin calls them, remembered events—are ways of concretizing ephemeral reflections—a method of documentation and sanctification. As Benjamin says in his essay, "The Image of Proust,"

Thus the laws of remembrance [are] operative even within the confines of the work [or memorial]. For an experienced event is finite—at any rate, confined to one sphere of experience; a remembered event is infinite, because it is only a key to everything that happened before it and after it.⁸

7. In addition to the LWI, there is the Association of Legal Writing Directors; the Section on Legal Writing, Reasoning, and Research of the Association of American Law Schools; and the American Society of Legal Writers.

8. WALTER BENJAMIN, *The Image of Proust*, in ILLUMINATIONS 201, 202 (Hannah Arendt ed., Harry Zohn trans., 1968).

The present overwhelms us, but it is the past that transcends the ephemeral nature of our existence. Those things that we want to be part of our history are acknowledged, documented, and memorialized. The people responsible for those events, or who have a certain perspective on them, are celebrated and recognized. Things memorialized and people recognized in these ways enter the cultural and historical lexicon. Sometimes these memorials and acknowledgements make their way into the mythologies that form the identities of a group or people. The Washington Monument in Washington, D.C., is an example that captures both of these aspects. The monument itself is recognizable the world over (perhaps even more than the Thomas Jefferson Memorial and Lincoln Memorial), and the ideals espoused by George Washington coalesce in the firmament itself.

There is an odd element to this, however. When people recognize their own events, when they acknowledge their own deeds—it smacks of either hubris or desperation. This is particularly true when an individual or entity strives for recognition and legitimacy. When members of a subgroup struggle for recognition within a larger group, the tendency is to search for confirmation and acknowledgement from their peers within the subgroup. The expectation is, I suppose, that the memorializations and awards that characterize these attempts at concretizing the achievements and legacy of the subgroup will demonstrate to the larger group that you are worthy of recognition—that you belong.

As I suggested above, individuals within the legal writing community often formalize the recognition of the achievements of prominent individuals from within the community by giving awards and prizes. I do not know of another field within law or from other academic disciplines that has so many awards of this nature. There is the yearly Golden Pen Award, which recognizes someone who makes “an extraordinary contribution to the cause of better legal writing.”⁹ The Thomas F. Blackwell Memorial Award annually recognizes a member of the legal writing community “who has made an outstanding contribution to improve the field of Legal Writing.”¹⁰ Then we have the Rombauer

9. Legal Writing Institute, Golden Pen Award, http://www.lwionline.org/golden_pen_award.html (last visited Mar. 10, 2010).

10. Legal Writing Institute, Blackwell Award, http://www.lwionline.org/blackwell_award.html (last visited Mar. 10, 2010). This award is named for my former colleague who taught legal writing at the Illinois Institute of Technology Chicago-Kent College of Law, the Texas Wesleyan University School of Law, and finally at the Appalachian School of Law where his life was tragically ended by a disgruntled student. The very worthy 2010 recipient of the award is Professor Steve Johansen, who teaches at the Lewis & Clark Law School in Portland, Oregon.

Award, which is periodically given to a prominent member of the legal writing community.¹¹ And finally, here at the Mercer Law Review Symposium, the first ever Mary Lawrence Award was given to Professor Chris Rideout for his contributions to legal writing in general, and for his impact on legal writing scholarship in particular.

As far as I am concerned, the recipients of these awards are more than worthy of the recognition they receive with the awards they are given. Likewise, the awards themselves—memorials of a sort meant to perpetuate and concretize the efforts or contributions of those who the awards are named after—are fitting tributes to those individuals. It certainly makes sense that in a field that has historically been besieged within the legal academy, members of the legal writing community would want to band together and recognize each other for the strides that have been struggled for and justifiably made. I am often struck, however, by how all this feels somewhat insular and premature. Certainly we should recognize individuals for their efforts, and having awards named after our heroes is fine, but we should be conscious of why we are doing this. If it is a support mechanism from within the community to acknowledge the efforts of fellow travelers, there is little harm in lavishing such warm and fuzzy accolades upon any number of worthy individuals. If there is an element of striving for outside recognition, however, we should be careful. For if this is the case, our decisions about who is worthy of recognition and memorialization will be scrutinized by members of the larger group whom we strive to be accepted by. If the members of the legal academy at large do not share our recognition, the litany of awards and accolades can appear as aggrandizement and self-congratulation. I do not believe it is these things, but I fear it may appear so to those who are not sympathetic to the professionalization of the field. This brings me to the last theme I want to discuss: mimesis.

IV. MIMESIS

Mimesis refers to the capability of humans to imitate—think *mimic*. People mimic in order to show their understanding of other forms of being. As Benjamin put it in his often overlooked essay “On the Mimetic Faculty,” “[t]he highest capacity for producing similarities . . . is man’s. His gift of seeing resemblances is nothing other than a rudiment of the powerful compulsion in former times to become and behave like

11. ALWD, Rombauer Award Information, http://www.alwd.org/awards/rombauer_award.html (last visited Mar. 10, 2010).

something else.”¹² It is the ability to imitate, to simulate, that allows us an important avenue to knowledge—knowledge of the world and of our selves. Imitative behavior in humans is primordial. Children learn to imitate their parents or other members of the social group. Novice or immature members of social groups imitate the more fully formed actions of expert or more mature members of the group in order to learn how to “be” like them. This is a way of accelerating maturity.

This mimetic faculty is often captured in our language. According to Benjamin, “language may be seen as the highest level of mimetic behavior and the most complete archive of nonsensuous similarity: a medium into which the earlier powers of mimetic production and comprehension have passed without residue, to the point where they have liquidated those of magic.”¹³ So how we speak, the language we use and the methods of self-reference that we rely on, now contains the most refined forms of mimesis. We must not forget action, however. I would suggest that the manner in which we carry ourselves and the language we use are both important indicators of levels of social and individual maturity and sophistication.

This all relates to the legal writing community in American law schools, and to the LWI in particular, in two distinct ways. First, we as a subgroup within legal education have a fairly consistent history of imitating certain behaviors and linguistic constructions within our own subgroup. Conversely, I think we historically have not done a good job in imitating or mimicking the accepted behaviors within the larger academy. Let me explain what I mean by each of these in turn.

Since the formation of the field of legal writing, members of the community have been regarded by other legal academics as outsiders. This phenomenon has been discussed and critiqued countless times (almost exclusively from the legal writing perspective), so I will not belabor the point here. What is important is the effect of this reality. One of the principal effects of this outsider status has been to throw us together in a tightly knit group of fellow travelers who closely identify with the fight each of us has had to engage in for recognition, legitimacy, acceptance, and so forth. Indeed, this impulse was one of the prime motivating factors of early members of the LWI. Because we have been so tightly knit and estranged from our colleagues on the casebook faculties of our law schools, we developed our own lexicon, our own conceptual paradigms, our own communities within which we have our own dialogues and debates.

12. WALTER BENJAMIN, *On the Mimetic Faculty*, in REFLECTIONS 333, 333 (Peter Demetz ed., Edmund Jephcott trans., Schocken Books 1986) (1978).

13. *Id.* at 336.

We have for more than two decades now imitated the language and actions of the founders of the LWI and prominent members of the legal writing community from its earliest days. Our textbooks are evidence of this, our syllabi are evidence of this, and even our contemporary scholarship is evidence of this. Many of us are teaching courses and writing articles remarkably like those taught and written by early members of the profession. There is nothing wrong with this, *per se*. In fact, as any new academic or intellectual field struggles for identity and recognition, this same sort of progression is common. Since we had little or no support from outside our community, we have historically turned inward for inspiration, support, and comfort. This is the one thing that many members of the LWI (and other legal writing organizations) laud as perhaps the most important and notable characteristic of our community.

I fear, though, that this impulse—however rational and understandable it might be—is now holding us back within the legal academy. Our insularity and clannishness has reinforced our outsider status. We do not imitate or mimic the actions and discourses of other disciplines within the academy or of the academy at large. While there are certainly members of the legal writing community that engage with the legal academy at all levels (there are, for example, more than a few legal writing people who are active in the American Bar Association and the Association of American Law Schools in sections other than those focused on legal writing), this is still the exception rather than the rule. By maintaining such an insular and self-protected status within the academy, I fear we are keeping ourselves in the disadvantaged position we always bemoan. We need engagement, not estrangement—integration, not separation. Our teaching should be more informed by doctrine; our activities within the profession should be more of the sort that would be (and are) expected of non-legal writing faculty members; and as a regular and expected part of our responsibilities, we should be producing high quality scholarship that is not seen as qualitatively different by others and by ourselves (this is most important). We should be law professors, not legal writing professors.

We must strive in our deeds, actions, and expectations to be like our colleagues. Continuing to demand to be treated equally while maintaining our own skewed conceptions of what we should and should not be doing is pointless. Instead of mimicking the actions and debates of the past twenty-five years within legal writing, we should be joining debates that have raged throughout the history of the profession. Symposia such as this one are fun and engaging, but honestly I long for a day when our symposia are filled with members from all sectors of the profession lauding what we do because we are fully integrated. I am tired of being

other, especially because at this point we are almost as responsible for that otherness as our historical detractors. How nice would it be to have deans, casebook professors, clinicians, and other actors from within legal education joining us in celebrating the work we (and they) do?

V. CONCLUSION

This has been a difficult essay to write. I have personally struggled with these ideas for some time, occasionally even writing and speaking about them. I suspect that there will be some (perhaps many) who will say that this was not the time or the occasion to air such ideas. For those who feel this way, I apologize. It was not my intention to slight the occasion or diminish the accomplishments of those who have been duly and rightfully recognized here (or in other such forums). The question of the significance of the twenty-fifth anniversary of the founding of the LWI, however, coupled together with my musings on the works of Walter Benjamin, have shown me just how complicated our history and our future is as a profession within the contemporary legal academy. This is a crossroads for us as a community. Let us reflect upon the events that have brought us here, memorialize those who have played an important role in that journey, and turn to each other for aid and comfort. This is perfectly reasonable and important. But let us not forget that our future—a future full of promise and excitement—is more important than where we came from. At least that is how I see it.