Teaching the Transitions

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When I was on jury duty a few years ago, a fellow juror asked me why, if students were taught to write well in college, they couldn't just *continue* to write well in law school. Since I had just been explaining with enthusiasm how my role as a writing advisor at law school was to help students join the clear writing movement, battle legalese, and so bring legal writing into the sunshine of clarity, I found myself momentarily stumped. How could I argue both things—that good legal writing is—and isn't—like all other good writing?

As a writing advisor, I'm in a unique position—standing at the intersections between writing worlds, trying to help students adapt a variety of previous writing experiences to the new writing situation of law school. This vantage point is both fascinating and painful. I witness much suffering by students who get caught in misunderstandings about the nature of good writing as they move from their previous writing worlds into the world of legal writing.

In this essay, I will focus on two closely-related things: first, the danger in the metaphor I just used—of students "moving *into* the world of legal writing." That image contributes to the wrongheaded idea that entrance into this world is a one-way ride, that students cannot belong to more than one writing world at a time, and that to acquire competence in this new discourse, they must forget what they have learned elsewhere about writing.

Second, I would like to promote the idea that students can escape such wrongheaded thinking if they see themselves as members of multiple writing worlds. As writing teachers, we can

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help them accomplish this by "teaching the transitions."[2] By this phrase I mean that we must not deny or exaggerate the differences in purpose, audience and context that arise among different disciplines and discourse communities. We must prepare students to expect those differences and to make transitions between different writing situations. As writing teachers, we need to help students find a happy medium between what I call "hyper flexibility" and "utter conviction"—at one end a kind of academic doublejointedness students develop from teacher-pleasing (which gives them flexibility without conviction), at the other, the kind of zealous never-and-always that comes from buying into one world view that stunts their ability to adapt. Encouraging this adaptability gives students warranted confidence in their writing skills and gives writing teachers the opportunity to prove to students that our teachings are based on something more than personal whimsy.
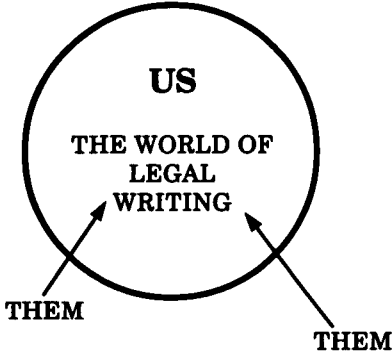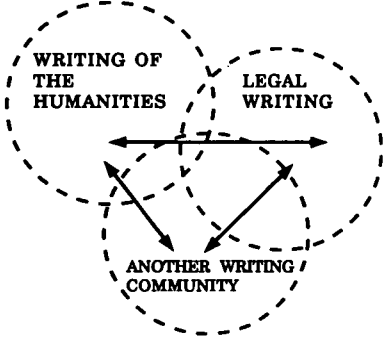
I. TWO PERSPECTIVES ON LEGAL WRITING

The following contrasting images illustrate how envisioning legal writing as a self-contained and self-sustaining world instead of as a writing community overlapping with, influenced by, existing *among* other communities, actually limits possibilities for both teachers and students of legal writing.

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[2] In this article, I address both the general phenomenon of teaching the transitions (preparing students to adapt to any different writing situation), as well as a specific example of that phenomena (preparing new law students to adapt to the demands of legal writing).

TABLE 1- **Two Perspectives on Legal Writing**

US

THE WORLD OF
LEGAL
WRITING

THEM

THEM

WRITING OF
THE
HUMANITIES

LEGAL
WRITING

ANOTHER WRITING
COMMUNITY

◆ Writing teachers as gatekeepers who guard borders	◆ Writing teachers as guides to new ways of writing
◆ Community as exclusive "us" with clearly defined borders; other teachers as interlopers with suspicious intentions	◆ Community as inclusive with permeable, shifting borders; other teachers as interlocuters with common goals
◆ Exclusive focus inward on discipline leading to hermetically sealed "detachable discourse community"	◆ Inclusive focus, overlapping circles allowing a healthy eclecticism and information "hybrids"
◆ Knowledge as a static, valuable commodity owned by insiders to be transferred "into" newcomers	◆ Knowledge as generated within a community and between communities; information and ideas transported in and out of community
◆ Conventions as unquestioned and unchanging truth	◆ Conventions as temporarily agreed upon communication strategies, subject to frequent inspection and possible change
◆ Assumption that writers will be lifelong members of this ONE discipline; goal is to produce writers with increasing specialization in one kind of writing	◆ Assumption that writers move among disciplines and belong to mulitiple discourse communities; goal is to build on previous expertise to produce adaptable writers and thinkers with a repertoire of strategies and the ability to select from those strategies with confidence

The image on the left suggests an unfriendly, exclusive definition of community. Its "us" would have little interest in ideas from other teachers or disciplines—or in the previous expertise of its potential new members ("them"). This image also suggests a limited view of both knowledge and conventions as a kind of static and unchanging intellectual capital kept within the discipline and passed on to new members as unquestioned and unchanging truth: it's "the way we do things here." The column on the left adds up to a limited view of education as a linear series of discrete experiences, with the "world of legal writing" being the last stop on a student's educational ride, with legal writing as the best, most important kind of writing ever. The student's goal, then, is to develop an increasing specialization in this kind of writing for the rest of that student's writing life.

In contrast, the image on the right allows much more potential for both teachers and students. It also seems more in keeping with this year's Legal Writing Institute theme, "What Can We Learn From Other Disciplines?"[3] This alternative image—of overlapping multiple writing communities with permeable, shifting edges and a multidirectional energy flow of people and ideas— transforms the role of the writing teacher into something more complex and rewarding. Instead of merely guarding borders, the teacher guides students as they move back and forth from community to community by helping students understand the rhetorical differences and commonalities between writing situations. Here, the discourse community is seen not as static and unchanging, but as a flexible, permeable structure that grows and changes with its membership. There is room for students to contribute something to the classroom. Accordingly, conventions are not written in stone, but temporarily agreed upon communication strategies that are constantly reviewed by a given writing community. Finally, this image accommodates the truth that writers belong to more than one writing community at a time and may need to write for more than one writing community at any time.

Today's students often choose to acquire a J.D. not as a vocational designation but as intervocational enhancement. And today's tightening job markets have required many law school graduates to branch out into other professional communities

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[3] This paper was originally prepared for the 1996 Legal Writing Institute Conference, held in Seattle, Washington.

with other kinds of writing.[4] In light of this situation, the student's goal should be to learn how to build on previous experience and to develop and draw on a repertoire of writing strategies—in short to become a professional writer who can adapt to each new writing situation by attending to rhetorical considerations such as audience, purpose and context. This idea of building on previous experience as a writer appeals to student writers because they feel their previous education counts for something. It is also one widely recognized by education experts as the way humans learn—not by "forgetting everything you learned about writing in college" but by attaching new information onto old.[5]

With this goal in mind—of helping to teach the transitions so that students learn how to make the transitions that will be required of them as professional writers—I will now discuss two ideas that come from our interdisciplinary overlaps with composition studies, practices associated with the process approach and the theory known as social construction.[6] These ideas have influenced our ways of teaching legal writing. Taken separately they serve a limited purpose, but together they can help us teach students how to make transitions between different writing situations.

A. *The Process Approach and Legal Writing*

What we often call "the" process approach is actually a group of practices with different contributing influences, namely expressivist and cognitivist influences.[7] I will not discuss these influences here; instead, I would like to articulate assumptions and practices that writing teachers seem to associate with "process" as a whole.

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[4] *See* Christopher Shea, *Legal Squeeze: Law Schools, Facing Drop in Applications and Tough Job Market, Cut Enrollment,* 42 CHRON. OF HIGHER EDUC. Feb. 16, 1996, at A37.

[5] *See* R.C. Anderson, *The Notion of Schemata and the Education Enterprise: General Discussion of the Conference, in* SCHOOLING AND THE ACQUISITION OF KNOWLEDGE, 415-429 (Anderson et al. eds. 1977).

[6] Because I am talking here about practices associated with "process" overall and not distinguishing between its different theoretical influences, I will refer to it as "the process approach" rather than a single coherent theory.

[7] *See* Lester Faigley, *Competing Theories of Process: A Critique and a Proposal,* 48 C. ENG. 527(1986)(provides a helpful summary of expressivist and cognitivist process influences).

TABLE 2- **Beliefs Associated with the Process Approach**

♦ Teachers should take individual student's writing backgrounds, histories, and abilities into account when teaching writing.

♦ Writing is a way of thinking and learning, not just a means of recording thought or testing students' abilities.

♦ Writers use writing at different times for different purposes and move from writer-based prose (writing used to explore and explain ideas to the self) to reader-based prose (writing used to communicate ideas to the reader).[8]

♦ Writing should be taught with some attention to the process writers engage in, not just to the documents that are produced:

One Model of the Writer's Process[9]

Writer-based prose   Reader-based prose
<-- -->
  Prewriting   Drafting   Revising   Polishing

♦ Students' best writing comes from topics students are interested in.

♦ Students' best writing contains a strong sense of individual voice.

♦ Writing is collaborative--not a competitive--act.

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[8]*See* Linda S. Flower and John R, Hayes, *Writer-Based Prose: A Cognitive Basis for Problems in Writing*, 41 C. ENG. 19, 19 (1979).

[9]Here I have charted some familiar stages of the writing process together with a reader-based/writer-continuum. For more discussion of the different aspects of this chart as they developed over time, see *id.* (for of reader and writer-based prose); and Flower and Hayes, *Problem-Solving Strategies and the Writing Process*, 39 C. Eng. 269 (1977)(for an early discussion of stages in the writing process).

As this summary suggests, process pedagogy focuses on the individual student writer and not just on the paper that student produced; promotes some attention to the creative self and to strategies for invention, not just to correcting papers; and values writing as a mode of learning and not just as a means of testing students. In fact, as James Marshall points out in his article "Of What Does Skill in Writing Really Consist?"[10] teaching the process has always been defined in reaction to something else—namely, to teaching traditionally, teaching the product. Teachers who adopted this pedagogical stance had what Marshall calls "attitude"—a critical attitude toward traditional education, a sense of themselves as outsider "Davids" critiquing the "Goliath" of well-established institutions.[11] This deliberately chosen and political stance not only gave writing teachers a way to talk about this slippery thing called writing, but also a slogan to rally around, a way to critique traditional education and to focus on students in a very teacher-centered environment, where students traditionally had little power, little say. However, process practitioners have now moved inside the very institutions they once attacked and thus must re-think goals and strategies if they are to continue allying themselves with process idea(l)s.[12]

The parallels between what process pedagogy gave composition teachers and what it has given teachers in our own profession are striking. Process pedagogy has played a significant role in our own professionalizing. For example, it seems no small coincidence that the influence of process theories of composing can be traced to the Legal Writing Institute's first biennial conference in 1984.[13] Presentations on process practices were present at that first conference and have become a "common feature"[14] of Legal Writing Institute conferences since. I would argue that process practices helped play an important role in Institute members' efforts to organize and cohere as a professional group and to find a more comfortable and productive place in the

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[10] James D. Marshall, *Of What Does Skill in Writing Really Consist?* in TAKING STOCK: THE WRITING PROCESS MOVEMENT IN THE '90s 45 (Lad Tobin & Thomas Newkirk eds. 1994). This article provides an excellent—and entertaining—sense of the history and prospects of the process movement in composition classrooms.

[11] *Id.* at 51.

[12] *Id.*

[13] *See* Jill J. Ramsfield & J. Christopher Rideout, *Legal Writing: A Revised View,* 69 WASH. L. REV. 35 (1994)(surveys the influences of composition theories on legal writing pedagogy).

[14] *Id.* at 53.

classroom. Process techniques helped legal writing teachers resist the narrow definition of writing as testing associated with the current-traditional paradigm. Teaching the "process, not just the product" allowed legal writing teachers to discuss invention, collaboration, writing as learning and so to escape some of the brutality of the rigid, hierarchical world of traditional law school teaching. Embracing process pedagogies allowed legal writing teachers to organize and tap into the energy of the institutional outsider, using it to indirectly and sometimes directly critique the system of legal education by promoting attention to students who traditionally received very little attention.

However, the role of the legal writing teacher within the system of legal education is also changing. Like the writing teachers Marshall describes, we are also (however slowly this may seem to be happening) becoming more a part of the system, more institutional insiders. Although recent scholarship[15] explores problems associated with the tenure tracking of legal writing professionals, that legal writing professionals are writing about tenure-track issues at all shows remarkable ground has been gained. Legal writing teachers have brought process into our texts and our teachings. What happens to an *out*sider pedagogy when it gets *in*stitutionalized? Is it taken for granted? Does it simply replace other rote teaching?

More and more of our texts discuss THE process approach and in*corporate* it into their chapters and our classrooms.[16] Sometimes it almost seems as though we are saying, "Come on, we're going to focus on the individual writer's process, but we're all going to do it the same way and here are *the* standard stages of the writing process." It would be ironic if practices that once gave students more power as individuals should turn into something once more mass produced in the classroom.

For more than a decade, composition scholars have begun to ask questions about process practices.[17] If legal writing professionals are to continue using these practices successfully, we must ask questions of such pedagogical practices as well—questions that keep such practices vital and prevent them from

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[15] 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).

[16] For example, Linda Edward's new text LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION (1996) makes explicit its "process" influence in the title.

[17] For an excellent discussion of a 1992 conference that reviewed the process movement, see TAKING STOCK: THE WRITING PROCESS MOVEMENT IN THE '90s (Lad Tobin & Thomas Newkirk eds. 1994).

merely substituting for other "traditional" ways of teaching writing. We must also consider how well we have adapted process practices to a law school setting. Have we fully taken into account the institutional influences of law school on such practices? Looking at the earlier list of beliefs associated with process, one can see how process tenets become more problematic, less adaptable to a law school setting the further down the list one goes. How often do law students get to select their topics; how often do we discuss "voice" beyond active and passive? After all, law school is still predominantly product-centered and teacher-centered, more competitive than collaborative. Recent Internet discussions about the difficulties involved in grading collaboratively produced writing should not be surprising, then, since these teaching methods were developed in college classes where they would be graded holistically. How can we adapt potentially useful practices so that they will work in law school classrooms, despite their differences from the college classrooms where the practices developed? Is it possible to adapt student-centered practices while still maintaining a powerful position in the legal education environment that still does not value student-centered teaching? How might an unsupportive institutional environment threaten to "warp" such transplanted teaching methods?[18]

Or how might teaching THE writing process as what Anne Ruggles Gere has called an uninspected "lockstep"[19] formula erase the individuality we set out to recognize and protect using process pedagogies? More specifically, how might teaching THE writing process as a series of universal stages through which all writers pass rather than as a highly fictionalized, albeit useful, concept blind us to considerations of how factors such as race, gender and culture affect such processes for different writers?[20] When does this useful fiction of "the" writing process break down in the face of what real writers actually do in a variety of real writing situations; how might teaching such stages as an uninspected ritual actually impede rather than help students?

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[18] For example, given the surrounding legal educational environment that does tend to "put down" students, it would be easy to follow suit; we must guard against letting such influences subvert sound process practices—for example, discussing student writing in class in any way that might embarrass students.

[19] Anne Ruggles Gere, *Narratives of Composition Studies,* 3 LEGAL WRITING 51,52 (1997).

[20] *See* Tobin & Newkirk, *supra* note 17, p.10.

For example, Flowers and Hayes' ideas about writing as problem solving and their suggested heuristics by which writers can more easily move from reader-based to writer-based prose[21] can help legal writing teachers illustrate how students might short-circuit their drafts with a too-early emphasis on creating reader-pleasing, polished prose. This generalized fiction[22] of the writing process, however, may not assist in teaching non-traditional[23] students or the growing population of ESL students because it does not take into account *their* writing process or their writing goals. After all, the reader-based/writer-based prose chart assumes that the writer's goal is always to move toward the clarity of the reader-friendly prose that we value in our very Western, very writer-responsible culture. But some Asian cultures are "reader-responsible" cultures.[24] Teaching clarity as a universal value or presenting writer-based prose as the "natural" destination of the universal writer may create additional hurdles for some students. After all, some cultures consider this directness insulting; as one ESL teacher explained to me, "It's like starting with the punch line and then going back and telling the joke."[25] How should our increasing knowledge about other cultures and their writing values affect how we teach THE four stages of the writing process and how responsible the student feels to "spell things out clearly and concisely" as she moves to the "reader-based prose" side of the writing process equation?

Or how might the influence of another culture's organizational patterns affect ESL students' writing processes?[26] Fan Shen, a Chinese graduate student who has researched the cul-

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[21] *See* the reader/writer continuum in Table 2; *see also* Linda S. Flower and John R. Hayes, *Problem-Solving Strategies and the Writing Process,* in RHETORIC AND COMPOSITION: A SOURCE BOOK FOR TEACHERS AND WRITERS 269 (Richard Graves ed. 1984).

[22] It is interesting to note how quickly the authors' idea of stages as heuristics were converted into standardized stages of "the" writing process despite the authors' emphasis that the stages are not discrete and the process as a whole is not linear. *See id.* at 281.

[23] For example, Sherrie Gradin raises interesting questions about how socially constructed gender influences might affect different writers depending on their level of comfort with models of writing based on combative metaphors such as "attacking" and "defending"—metaphors on which we rely to teach persuasive writing. *See* Sherrie Gradin, ROMANCING RHETORICS: SOCIAL EXPRESSIVIST PERSPECTIVES ON THE TEACHING OF WRITING 129-130 (1995).

[24] *See* J. Hinds, *Reader versus Writer Responsibility: A New Typology,* WRITING ACROSS LANGUAGES: ANALYSIS OF L2 TEXT 141 (1987).

[25] This insight was shared with me in a conversation with Debra Parker, a fellow writing advisor at The John Marshall Law School.

[26] *See* Gradin, *supra* note 23, at 151.

tural nature of writing, explains how the idea of a "point-first" topic sentence runs counter to the Chinese "bush-clearing" pattern in which the writer "clears the surrounding bushes before attacking the real target."[27] The Chinese bush clearing pattern is a two-thousand-year old organizational pattern that directly opposes IRAC's point-first organization structure. Although we need not abandon values such as clarity or organizational tools such as IRAC, we must consider how our students' previous writing backgrounds will influence their writing in order to help such students learn to adapt to "the way we do things here."

Finally, when considering how best to discuss writing processes with our students, we will need to address the "wild-card" of technology. What impact will composing on a computer have on a student's draft?[28] What effect will revising without a hard copy have on a finished product? One new legal writing text recommends that students "compose with a word processor,"[29] citing reasons of ease and efficiency. Although this recommendation makes sense for many writers, it leaves out those of us whose necessary composing process includes scribbling on napkins, or composing on a Dictaphone while driving.[30] We must continually question the methods with which we teach, making sure that they take into account changes in our classrooms and in our student populations.

B. *Social Construction and Legal Writing*

Some of these questions about how a person's writing process may be influenced by social factors are addressed by social construction. As a writing theory, social construction is newer and less codified than process pedagogies, but its roots are equally complex, with a host of influences as diverse as Marxism and Poststructuralism.[31] Social construction developed in the composition world as a critique of, if not an attack on, practices associated with the process approach.[32] I also see it as a

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[27] *Id.*

[28] Although I can find no research to support this impression, one potential drawback of "composing on screen" seems to be a lack of what students call "flow." Students' computer written drafts often tend to be coherent in screen-sized chunks rather than organized in a more global sense.

[29] Edwards, *supra* note 16, at xxii.

[30] It also may not take into account some students' economic realities—and if not, could intimidate a student who fears he or she is not "doing it right."

[31] Faigley, *supra* note 7.

[32] Scholars in the composition world have tended to pit "process" ideas against those

more "elite" theory coinciding with the professionalizing of composition theory as a discipline with an increasing level of status and power in College English departments,[33] and one which seems to exacerbate the unfortunate "teachers" versus "researchers" polarization.[34]

TABLE 3- Beliefs Associated with Social Construction

> ♦ Writers write within and are influenced by the sometimes unarticulated rules of the discourse communities they enter.
>
> ♦ Many problems students encounter are temporary and arise because students are confused about (or lack of knowledge about) the new rules and conventions of an unfamiliar discourse community.
>
> ♦ Expertise in writing per se is a myth; expertise exists within and in relation to a particular discourse community and what that community values.
>
> ♦ Writers are "written" by culture and context; writers making "individual" choices is a myth.
>
> ♦ Individual voice is a myth.
>
> ♦ Students best learn to write within a new discourse community by critiquing and reading "skeptically" texts produced within that community in order to see how each writer is written by culture and context.

associated with social construction, as evidenced by the widely publicized and now published debates between Peter Elbow and David Bartholomae. *See Writing with Teachers: A Conversation with Peter Elbow*, 46 C. COMPOSITION & COMM. 62 (1995).

   [33] *See* Carol Berkenkotter's *Paradigm Debates, Turf Wars, and the Conduct of Sociocognitive Inquiry in Composition*, 42 C. COMPOSITION & COMM. 151 (1991)(provides an interesting reminder of how scholarly production and theory making is tied to professional self-interest).

   [34] James D. Marshall, *Two Ways of Knowing: Relations Between Research and Practice in the Teaching of Writing, in* WAYS OF KNOWING (James S. Davis & James D. Marshall eds. 1988).

One of social construction's chief contributions is that it reminds those attracted to THE process approach that writing does not occur in a vacuum but flows from and always exists within human-made discourse communities[35] where that writing makes sense and has value. Thus, the social constructionist questions the idea of ONE process able to accommodate the activities of the many writing communities populated by a multitude of many writers performing a variety of different writing tasks.

Instead of a focus on the individual learner/writer, this theory emphasizes the context within which a writer writes, and even suggests, in its most extreme formulation, that the individual is "written" by culture and by context, that the "individual" writer does not exist because such writers are always a part of a larger WE that exerts a powerful influence on "individual" choices. Such an idea serves as a helpful check on the idea of the individual creator as completely autonomous agent, in control of and responsible for his or her process OR product (which is often how students are judged and ranked in law school). Social construction can help us understand how experienced writers who have done well in other discourse communities can be so terribly disconcerted when they shift into the discourse community of legal writing with its new rules, conventions, purposes, and audiences.

Finally, this theory also helps us (and all disciplines) remember with some humility that expertise itself is created by communities of individuals agreeing that something is valuable or works well and that patterns of deductive or inductive reasoning are created by humans and are not discovered Universal principles. It is easy to forget that the organizational tool IRAC, so pervasive in our legal writing world, is a *human*-made creation that has served us well as a group, that we have decided to endorse and pass along to our new members, but it is not, as the 2,000-year-old "bush-clearing pattern" example reminds us, the *only* or the most important way in the world to organize thinking.

However helpful social construction may be, it is not without its dangers. Because it incorporates so many influences and

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[35] The idea of a discourse community may be simply understood as a fancy way of saying "the way we do things here" within our discipline or, to use Patricia Bizzell's definition, "a group of people who share certain language-using practices." PATRICIA BIZZELL, ACADEMIC DISCOURSE AND CRITICAL CONSCIOUSNESS, 222 (1992).

ideas, social construction seems to hold some attraction for most teachers. In fact, Patricia Sullivan, reviewing several new books on social construction, calls it the "default theory of the 90's"—a kind of "Alice's restaurant" where writing teachers "can get anything we want."[36] This theory requires real attention to the whole and could be very dangerous if taken up only in part. For example, what legal writing teachers might find particularly attractive is the social constructionist idea of legal writing as a discourse community—because accompanying this idea is the clear-cut professional role of expert initiators of novice students desiring to enter into this discourse community. Unfortunately, this genuinely benign position—helping students into the legal writing discourse community—is perilously close to what was emphasized in the "bad old days"[37] of the current traditional paradigm. If we used the idea of discourse community unselfconsciously, it would be very easy to become "in-focused" on *our* concerns and on our increasingly specialized ways of doing things.[38] After all, any idea of community can lose its inviting inclusive meaning and become more exclusive. Rituals of initiation can quickly become elaborate forms of hazing in a place where students have little power. Unlike many process practices, the idea of initiating students into a discourse community has ready-made alliances with the law school world, which you can hear in Kingsfield's phrase from *The Paper Chase*: "You arrive here with a head full of mush and you leave thinking like a lawyer." This quote captures the expert-novice divide, the initiation rituals that reinforce that divide, and the idea of fully realized, merely to-be-learned conventions.

   An example of how easy it is to subvert a positive, inclusive sense of discourse community into a more exclusive and less friendly one is provided by Joseph Williams' article, "On the Maturing of Legal Writers."[39] An influential piece that prepared the ground for the legal writing community's interest in ideas from social construction, the article focuses on the socialization of new legal writers and attempts to explain their "seeming incom-

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   [36] Patricia Sullivan, *Social Construction and Literacy Studies*, 57 C. ENG. 950(1995).
   [37] Gere, *supra* note 19, at 52.
   [38] In fact, increasing specialization is one of the six criteria that applied linguist John Swales suggests should determine whether a "given social group is a discourse community." John Swales, *Approaching the Concept of Discourse Community*, quoted by BIZZELL, *supra* note 35, at 226.
   [39] Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development* 1 LEGAL WRITING 1 (1991).

petence"[40] at legal writing as more a matter of unfamiliarity with expert legal writers' ways of doing things than a result of declining literacy skills in the United States. Williams does acknowledge expertise, briefly,[41] as a social construct; however, the article, if not read carefully, could do more to introduce the term "discourse community" as a potentially detachable concept, and less to invite the legal writing community to self-consciously analyze and reconsider the ways in which the group uses language to construct knowledge and "expertise." An inadvertent emphasis on "social[ization]" without a balancing emphasis on "construction" could have damaging consequences.

Although the article suggests reenvisioning the student-teacher relationship by dismantling the power structure of teacher-on-the-mount, Williams' reimagined visual metaphor[42] is still limiting since it relies on and reinforces the insider/outsider distinction. In Williams' picture, this discourse community has a rigid, if not impermeable rind and one narrow opening, and its us/them division suggests the exclusivity of the inner community. Here the desired action is one way: in. Although Williams acknowledges that "we are all novices in some communities and experts in others,"[43] it is not clear from this image how or if the constant traffic of students/experts brings any change to the legal writing discourse community. The limit of this image in social constructionist terms is that it cannot accommodate the possibility of enriching overlaps and intersections of previous experience or expertise that help keep a discourse community alive and healthy. Finally, envisioning "us" as a detachable discourse community taken out of an institutional context tempts us to ignore what social construction asks us to recall: that discourse communities are built and maintained by power structures.

Without that important background information in mind, the benign role of "initiating students into our discourse community" could begin to sound more ominous and more hierarchical—aren't experts always "higher" than novices? The phrase (with its expert initiators and novice students) sounds painfully

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[40] *Id.* at 15.

[41] *Id.* at 13.

[42] Williams' image, meant to replace the hierarchical model of teacher on the mount with students struggling up the slope of knowledge with an expert-teachers "us" inside a circle and a novice-students "them" outside trying to get in, looks very similar to the "us/them" image above in Table 1.

[43] *Id.* at 31.

like hazing new law students. As Faigley reminds us, "the learning of literacy as a social activity within a specific community will not necessarily lead to desirable ends" since "consensus often leads to oppression."[44] Many of our students are professionals with distinguished backgrounds and significant levels of expertise in other discourse communities and other professional communities. It is hard to be considered a novice when one is otherwise an expert for eight hours of the day, hard not to have a chance to draw on that source of experience or self-respect. We cannot simply mention in passing that students come to legal writing with their own expertise, and then treat this expertise as a stumbling block, an explanation for students' incompetence at and discomfort with legal writing. To do so not only frustrates students but it ignores a real possibility: students as potential agents for review and possible reform of legal writing conventions.[45]

If we don't balance looking at "the way we do things here" with some attention to the way others do things there, our discipline's growth—accelerated by our idea exchanges with other academic disciplines like composition or educational psychology— might slow or stall. If we become isolated from a flow of new ideas, ideas to which students can also contribute, then we incur the risk of becoming a hermetically sealed world,[46] caring only about preserving THE WAY WE DO THINGS, a discrete and never-changing body of knowledge students must "master." Teachers would again be gatekeepers of information, and it would be difficult to really see the difference from where we started with a traditional emphasis on product. We must take constant care, then, that phrases like "initiating our students into our discourse community" don't become detachable concepts, more familiar to us than the whole theory in which they

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[44] Faigley, *supra* note 7 at 539.

[45] Charles Bazerman, for example, reminds us that although disciplinary teachings may ignore the context within which they are located, pretending to be "methodologically pure and intellectually isolatable from the messy complexity of the world," this act may be seen merely as a rhetorical move of the "group who has gained the upper hand and is attempting to establish rules that purvey its position." *See* CHARLES BAZERMAN, CONSTRUCTING EXPERIENCE, 75 (1994).

[46] At a 1995 AALS colloquium on narrative, James Elkins suggested that the legal writing community appeared to outsiders as an awesome edifice that one could enter but never leave—an image that we do not, in my opinion, currently deserve but one that we should certainly take care to avoid. For the subsequent article in which he discusses ideas raised in the speech, see James R. Elkins, *What Kind of Story is Legal Writing?* 20 LEGAL STUDIES FORUM 95,109(1996).

are rooted. The idea of a discourse community cannot be detached from the whole theory of social construction that reminds us how discourse communities are constructed and situated.

It is interesting that this theory of social construction is becoming attractive to us and more a part of our disciplinary conversation as we enter into what I think of as "professionalizing: part two." In this second stage of development, we legal writing professionals no longer feel insecure about the legitimacy of legal writing's status as a discipline. After all, this year's conference theme is "What Can We Learn from Other Disciplines?," a question that confidently assumes we are one.[47] We now face other questions: What kind of a discipline will we be and how will we fit within the institution of legal education—serving whose interests?

It is interesting, too, that Williams' piece, which claims legal writing as a discourse community, appears in the inaugural issue of the Legal Writing Institute's journal, as the existence of such forums is one of the hallmarks of a discourse community.[48] As we struggle for disciplinary status with non-legal writing colleagues, it makes sense that we might be attracted to a theory like social construction that sounds prestigious and that keeps the power and influence within the discipline, while process practices, which share that power with students, might become less so.[49] It is worth considering why we as a group might be attracted to any given theory at any given time and how our political struggles might influence our theoretical choices as a group.

II. Process and Social Construction Ideas in Dialectic

Approaches from process pedagogy can help us avoid the fate of what I've been calling the detachable discourse community. Talking and thinking with our students, as process practices have always encouraged us to do, will help us value our students' previous expertise in other languages and other discourse communities. Then we will recall that our *here* is balanced against and overlaps many *theres*. Our students can help us discover new truths about the interplay between the individual and the community, and remind us how even the most

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[47] *See* James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry, Evaluating the Prospects,* 60 Rev. Educ. Res. 153, 154 (1990). Only six years ago, Stratman urged readers that legal writing "should be given distinct disciplinary status."

[48] Bizzell, *supra* note 35, at 222.

[49] I am grateful to Anne Enquist whose conversation helped clarify this idea.

traditional of communities can change with the influence of its new members even as that community exerts an influence on those students.

Such interplay is bound to cause friction and conflict, both for the community and the student writer entering the community. I believe in a healthy amount of conflict: I expect student learners to feel discomfort as they encounter new ways of doing things. But teachers should not ignore this discomfort, or consider students who are uncomfortable with different conventions as somehow backward. We must become learners ourselves and allow ourselves the discomfort of viewing our conventions through new eyes.

Then we could guide a conversation in which we consider *with* students the following kinds of questions: When does a convention set up what Elaine Maimom[50] calls a "useful expectation" in the mind of a reader and so serve a genuine communicative purpose? When are we inflicting conventions on students merely because we had to do it that way? Listening to students' voices and hearing their different world views helps us recall the different ways of reading and writing in the world, so we don't succumb to tunnel vision. These voices, after all, contain the same healthy skepticism once associate with the Plain English movement, a movement that challenged calcified aspects of legal language and demanded clear communication.

Putting process practices and social constructionist theories into a dialectic—one reminding us of the individual in the community, the other reminding us that communities are comprised of individuals—can help us keep the balance and best serve our students.

III. WRITING ACROSS THE CURRICULUM IDEAS AS PROPOSED DIALECTIC—AND A SOURCE OF TEACHING THE TRANSITION

The following chart illustrates how much would be lost by setting ideas associated with "process" and social construction in opposition. To me, neither paradigm seems complete without the other, but taken together they prompt the kinds of questions that as a group of teachers we should consider: How are each learner's choices and writing processes shaped by his or her culture/context/task? What impact has each student learner's educational history had on that student's introduction to this new

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[50] Elaine Maimom, Provost at Arizona State University West, in conversation.

way of writing? How can legal writing be both an individual ac-
tion AND a social interaction? Finally, how does each writer
take "independent journeys of the mind"[51] within disciplinary
constraints; what unique solutions does any given human come
up with in the face of joint projects?

TABLE 4- "Process" and Social Construction Set in Opposition

The Process Approach	The Social View
◆ Student centered	◆ Norm centered
◆ Emphasis on individual style	◆ Emphasis on discourse community
◆ Judgment of writing suspended	◆ Writing judged in accordance with community norms
◆ Ideal of form as organic	◆ Form dictated by community
◆ Interest in process of individual learner	◆ Interest in how learners' products are shaped by culture and context
◆ Writer-based, creative focus	◆ Reader-based, critical focus
◆ Writing as individual action	◆ Writing as social act
◆ Individual differences celebrated	◆ Common influences examined

Both process practices and ideas from social construction have
much to offer the legal writing community, and a considered
balance between these two is possible. The Writing Across
theCurriculum movement (WAC), long noted for its ecumenical
nature, contains many insights about achieving such a balance.

The WAC movement has already tried to "embrace the con-
traries," to use Peter Elbow's phrase, involved in responsibly us-
ing information from both process-based pedagogy and social
construction. Specifically, WAC has toned down what Jones and
Comprone call its "missionary zeal"[52] for transplanting expres-

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[51] *See* Linda Flower, THE CONSTRUCTION OF NEGOTIATED MEANING: A SOCIAL COGNI-
TIVE THEORY OF MEANING 292 (1994).

[52] Robert Jones & Joseph S. Comprone, *Where Do We Go Next in Writing Across the
Curriculum,* 44 C. COMPOSITION & COMM. 59, 64 (1993).

sivist process practices, tempering it with a social perspective that acknowledges a sensitivity for the discourse community into which writing techniques and theories are to be transplanted. Because of its interdisciplinary nature, WAC offers insights into teaching the transitions. By acknowledging that there are multiple discourse communities and that people move among them, WAC challenges the idea that disciplines are static, independently bounded repositories of knowledge, replacing it with the idea that disciplines are dynamic communities that constantly grow and change with changes in their membership. It is students moving across curriculums, in and out of disciplines,that keep these communities alive.

This recognition of interconnectedness encourages members of different disciplines to respect one another and to treat students transitioning more respectfully. To teach the transitions, we need to mean it when we say that we value what students bring as new members of any discourse community, even while introducing them to the new community's conventions. Acknowledging and respecting the logic and diversity of conventions belonging to various educational communities is an opportunity to constantly live the examined life, to recall *why* we do the things we do, and to change conventions that have outlived their usefulness. Take, for example, Mellinkoff's explanation of lawyering doubling—redundant phrases like "cease and desist."[53] Once serving a genuine communicative purpose by including synonyms from two different languages to best address potential listeners, the phrase has long since outlived that purpose and has been targeted as repetitive by the Plain English movement.

People who are ensconced in their own discourse communities lack what Maimon calls a "sense of intellectual tact,"[54] a perspective on and appreciation for a variety of educational approaches. For example, if legal writing teachers treat their students more like ambassadors from other disciplines, rather than lifelong recruits, we will be more polite about introducing them to how "we do things here." Students can remind us of the need for intellectual manners in an increasingly interdisciplinary world.

Curriculum, 44 C. COMPOSITION & COMM. 59, 64 (1993).

[53] DAVID MELLINKOFF, THE LANGUAGE OF THE LAW at 38-39,121-122 (1963).

[54] Quoted by DAVID RUSSELL, WRITING IN THE ACADEMIC DISCIPLINES: A CURRICULAR HISTORY 1870-1990, 306 (1991).

IV. TEACHING THE TRANSITIONS

Teaching the transitions between different writing situations requires writing teachers to keep three questions in mind at once: 1) Where are students coming from—what experiences have students had in other discourse communities or other cultures? 2) Where may students be going next as writers, and how can we can teach in a way that will help them make those future transitions from class to class or discipline to discipline? 3) What must we convey to them about the new conventions, rules, and reasons for those in our own writing community?

Teaching the transitions requires something more complicated than simply "initiating students into our discourse community," as a quick reading of social construction might seem to suggest. It means we have an opportunity to introduce students to our community and its ways while encouraging them to reflect on and more deeply understand the other writing communities to which they also belong, and how to manage moves into other, future discourse communities and writing situations.

In my own work, teaching the transitions has meant providing a series of "traumatic transitions" workshops in which I highlight the differences in the rhetorical situations students move among. Juxtaposing writing communities (for example, legal writing and college writing) or writing courses (objective writing and persuasive writing), I try to illuminate the otherwise hidden logic and connections between conventions, discourse communities and institutions. Explaining the logic that underlies the differences students experience helps keep them saner and less cynical. I envision my role as that of an interlocutor, one standing deliberately in the intersections of writing courses or communities. This role of teachers as interlocutors allows us to teach one another—and our students—more. As interlocutors, we would focus less on surface differences and more on common communicative purposes.

Interlocutors can encourage students to articulate a practical knowledge of differing academic discourses. The more clearly we interlocutors see these differences and connections, the more easily we can help our students become sensitive to them, more able to cope. This heightened interdisciplinary awareness helps us develop with our students what I have heard John Trimbur call a "rhetoric of dissensus"—the language and analytical tools students can use to anticipate and negotiate conflicts and transitions between writing situations.

Teaching the transitions is a way of keeping the borders open between disciplines, letting the intersections be particularly productive places of learning. A guiding metaphor for me is the idea of welcome stations across state lines. If it is too much to ask for free cocoa in such places, at least we can provide traveling students with a large and reader-friendly map and an arrow indicating YOU ARE HERE.