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Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It

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I. INTRODUCTION

"The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career."[1]

Words are the tools of a lawyer's trade.[2] To read, write, and appreciate the power of words in the profession is a central educational goal of law school. Producing effective legal writing draws upon all aspects of a legal education, and the development of communicative skills is inseparable from the development of analytic skills. Writing throughout the law school curriculum helps students learn to use writing as a means of creating their own understanding of the law and introduces them to the community of legal discourse that frames this understanding.

To help students gain competence in written communication skills and to provide a basis for graduates to continue to develop these skills throughout their professional careers, a law school writing program should not be envisioned simply in terms of its first-year legal writing course, but rather as including all opportunities to use writing to promote professional competence throughout all three years of law school. Accordingly, in this Article, the phrase "law school writing program" refers not only to those courses in which primary emphasis is on written communication, but also to seminars, clinical courses, and doctrinal courses—in short, to all of the writing experiences offered to students throughout the law school curriculum.

Although the proposition that written communication skills are part of a cluster of professional skills in which a lawyer must be competent may seem obvious, and although a consensus has emerged that analysis and communication are interrelated, within too many law schools the notion has persisted that writing is a discrete skill to be taught only in "legal writing" classes in the first year of law school. In fact, until recently the American Bar Association standards for law school accreditation reflected that view: the only standard relating to

1. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 3 (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992)[hereinafter MacCrate Report].

2. Glanville Williams, *Language and the Law*, 61 LAW Q. REV. 71, 71 (1946)("[W]ords are of central importance to the lawyer because they are, in a very particular way, the tools of his trade.").

legal writing provided simply that law schools should require "one rigorous writing experience"[3] during law school. Neither a single "rigorous writing experience" nor a first-year legal writing class is sufficient to provide basic competence in written communication.[4]

On August 6, 1996, the American Bar Association amended its standards for law school accreditation[5] to include the following language: "The law school shall offer to all of its students . . . an educational program designed to provide that its graduates possess basic competence in legal analysis and reasoning, oral communication, legal research, problem-solving and written communication."[6] The new standard recognizes that competence in written communication is an integral component of the repertoire of professional skills in which lawyers should be competent; it mandates that law schools design programs that will enable students to develop the basic competencies that are a lawyer's essential tools.

The new standard codifies some of the recommendations made in an American Bar Association task force report popularly known as the MacCrate Report.[7] The MacCrate Report characterizes the relation-

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3. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS Standard 302(a)(ii) (1994)[hereinafter ABA Standards]. Criticizing that standard, Susan Brody stated:

> This standard can easily be satisfied by an upper-level seminar in which a student submits, at the end of the semester, one paper on a particular topic and receives nothing more than a little feedback and a final grade. Such a scenario undermines the educational continuum as envisioned by the MacCrate Report. It also ignores the wide-spread recognition that lawyers need to improve their oral and written communication skills. Without a more accurate and realistic ABA standard to evaluate a curriculum's writing requirements, law schools will not make the sweeping changes that are necessary to teach effectively oral and written communication skills.
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> The standard should be changed to require the teaching of oral and written communication skills on a regular and systematic basis throughout the curriculum.

Susan L. Brody, The MacCrate Report: Building the Educational Continuum 8-9, Plenary Session Presented at the Conference of the Legal Writing Institute (July 29, 1994)(transcript on file with the *Nebraska Law Review*).

4. *See* Douglas Laycock, *Why the First-Year Legal-Writing Course Cannot Do Much about Bad Legal Writing*, 1 SCRIBES 83 (1990).

5. M.A. Stapleton, *Law School Accreditation Standards See First Change Since 1974*, CH. DAILY L. BULL., Aug. 7, 1996, at 1.

6. ABA Standards, *supra* note 3, Standard 302(a)(ii) (as amended Aug. 1996).

7. MacCrate Report, *supra* note 1. The MacCrate Report "identif[ies] a shared goal for the law schools, the bar, and the bench, working together: to build an educational continuum that would assure all new lawyers the opportunity for comprehensive instruction in lawyering skills and professional values as the key to effective participation in the legal profession." Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89, 91 (1994).

ship of legal education and professional development as "an educational continuum" and emphasizes the essential role that skills courses play in facilitating the development of professional skills and values while students are in law school and throughout their professional careers.[8] Both the MacCrate Report and a companion study undertaken by the American Bar Foundation[9] identify skills in written and oral communication as fundamental to the successful practice of law.[10] In response to the challenge presented by the MacCrate Report, many law schools have considered ways to improve their effectiveness in teaching legal writing and in helping students develop rhetorical skills.[11] The recent amendment to the accreditation standards should provide added impetus to these efforts at curricular reform.

The new standard reflects understanding that competence in legal writing requires more than technical proficiency in standard written English and familiarity with standard forms of professional legal writ-

8. The MacCrate Report is not the first ABA report to take this position. In 1979, the Report of the ABA Task Force on Lawyer Competency, known as the "Crampton Report," recommended that law schools "provide every student at least one rigorous legal writing experience in each year." SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 3 (1979). That project responded to concerns such as those voiced by Chief Justice Warren Burger that "one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation." Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 234 (1973). Although the Chief Justice's observations referred specifically to trial practice, the growth of legal writing programs in law schools over the past two decades may be traceable to his remarks.

9. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 508 (1993)("Oral and written communication skills are deemed to be the very most important skills necessary for beginning lawyers. They outrank other practical skills and more specifically legal skills such as substantive legal knowledge, legal reasoning, and legal research."). The authors conducted a survey of lawyers practicing in Chicago who had been admitted to the bar between 1986 and 1991, asking them to rate the importance in practice of a variety of professional skills, including those listed in the MacCrate Report. The authors compared the responses of those Chicago lawyers to responses to a similar survey of lawyers practicing in rural and mid-sized urban areas in Missouri, and to data collected in the mid-1970s. *See* FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION (1981).

10. MacCrate Report, *supra* note 1, at 172-76; Garth & Martin, *supra* note 9, at 508.

11. *See, e.g.*, Jill J. Ramsfield & J. Christopher Rideout, *Using Legal Writing to Narrow the Gap: Socializing Students into the Legal Education and Law Practice*, *in* THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM CONFERENCE PROCEEDINGS 155 (1994). For criticism of the MacCrate Report's failure to discuss the resource implications of its recommendations, and an illustration of the costs of funding a comprehensive legal writing program, see John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993).

ing. Development of legal writing skills is inseparable from development of the other skills recognized as essential in the recodified standards of accreditation for law schools: "legal analysis and reasoning, oral communication, legal research, [and] problem-solving."[12]

Accordingly, every law school course can teach students ways to use writing to help them analyze legal authorities and organize analysis, can expose students to various kinds of professional documents, and can encourage students to use writing to explore the nuances of law and fact and reflect on the social policies underlying legal issues. This education thereby socializes students into the discourse community of lawyers. In addition, opportunities exist throughout the law school curriculum to use writing to help students understand the creative and critical processes by which they generate and refine analysis of legal problems.

Decisions concerning law school writing curricula should be informed by the scholarship in composition theory that has contributed to the growth of legal writing programs over the past twenty years. Three theoretical approaches have been particularly influential: instrumental, process, and social context theories.[13] A comprehensive law school writing program should draw upon all of these theories; no single theory is sufficient.[14] Their lessons are valuable to all faculty involved in teaching writing throughout the law school curriculum.

The first of these theories, the instrumental approach, regards writing as simply the instrument by which the writer's thoughts are presented. The goal is a transparent document that conforms to conventions of format and style.[15] The values central to this theory, clarity and conformity to rules, are essential to effective communication in legal documents and to the credibility of their authors. The aspects of

12. ABA Standards, *supra* note 3, Standard 302(a)(ii).

13. These approaches are given various names by various commentators and subdivided into finer categories. For a thorough, straightforward, and thoughtful discussion of these theories and their relevance to legal writing and writing instruction, see J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35 (1994), and authorities cited therein.

14. *See* Jessie Grearson, *Process to Product: Teaching the Writing Process in Law School*, SECOND DRAFT (Legal Writing Inst., Seattle, Wash.), Oct. 1993, at 3. *See also* Natalie A. Markman, *Bringing Journalism Pedagogy into the Legal Writing Class*, 43 J. LEGAL EDUC. 551 (1993).

15. [W]ith instrumental writing we are concerned primarily with the finished product of the writing and not at all with how the writing process might affect favorably or help create the very substance of our written thought. In other words, with instrumental writing we are concerned with the process only to the extent that the conventions and rules of grammar and vocabulary are applied correctly to thoughts that could be communicated orally but for considerations of efficiency and effectiveness.

Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 138 (1987).

writing emphasized under this theory probably approximate most closely what a layperson means when she refers to *writing*.

By contrast, the process approach, which gained prominence following the 1982 publication of Maxine Hairston's article, *The Winds of Change: Thomas Kuhn and the Revolution in the Teaching of Writing*,[16] focuses primarily not on the document itself but rather on the process by which it is created: the act of writing serves not only to communicate the writer's knowledge but also to generate that knowledge.[17] Under this view,

> knowledge . . . is the product of an interaction between the writer, reader, subject, and text. Knowledge does not exist except within linguistic forms that both construct and constrain it. Every act of writing, then, is an act of construction, and the task of the writer is not only to find the right words to describe the subject, as in the [instrumental] perspective, but also to use language in such a way as to generate, and then to embody, meaning.[18]

The process approach to writing represented a paradigm shift away from the instrumental approach to composition theory.[19] It was embraced by legal writing teachers because it explained a phenomenon they had observed in their students: analysis and communication skills develop together in synergy. In addition, because this approach focuses on the process of producing drafts, and the recursive process of rereading and questioning the writing, it emphasizes critical reading skills.[20]

Finally, the social context approach is the most recent development in composition theory to influence law school writing programs. This approach seeks to "acknowledge the social contexts within which writing takes place and, thus, to acknowledge the ways in which writing generates meanings that are shaped and constrained by those contexts."[21] Under this approach, law students are viewed as entering a new community of discourse.[22] To produce effective legal writing, stu-

16. 33 C. COMPOSITION & COMM. 76 (1982).
17. Rideout and Ramsfield describe this view as the epistemic view. *See* Rideout & Ramsfield, *supra* note 13, at 54.
18. *Id.* at 55 (citing JAMES A. BERLIN, RHETORIC AND REALITY: WRITING INSTRUCTION IN AMERICAN COLLEGES, 1900-1985, at 166-67 (Marilyn R. Days, ed., 1987)).
19. Hairston, *supra* note 16, at 76. *See also* Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089 (1986).
20. For an excellent discussion of legal reading and legal writing, see Dorothy H. Deegan, *Exploring Individual Differences Among Novices in a Specific Domain: The Case of Law*, 30 READING RES. Q. 154 (1995); Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 179-205 (1993); James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 J. LEGAL WRITING INST. 35 (1991). *See also* Kissam, *supra* note 15, at 152-57.
21. Rideout & Ramsfield, *supra* note 13, at 57.
22. *See* Ramsfield & Rideout, *supra* note 11, at 158-62. For a thorough discussion of interpretive communities, see generally STANLEY FISH, IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES (1980); STANLEY FISH, DO-

dents need to learn what effective legal writing is,[23] and they need to write in the discipline—a lot—to really understand how it functions.[24]

Opportunities to use these theories to help law students improve their skills in communicating legal analysis arguments and advice exist in all law school courses and are not limited to classes with "writing" in their titles. Accordingly, in evaluating a law school's writing program, the faculty should not limit its focus to the first-year "legal writing" curriculum. Faculty who seek to improve law school writing programs should consider how to enhance writing experiences already available in seminars, clinics, practice skills courses, and other classes, and how to incorporate writing experiences in doctrinal courses to complement Socratic or lecture-discussion models of instruction.

This Article will discuss three educational goals served by writing experiences in law school and will suggest curriculum and teaching methods to advance these goals in legal writing courses and throughout the law school curriculum. To accomplish the educational goals discussed in this Article, a law school writing curriculum should engage students during all three years of law school.[25] Susan Brody has suggested that the ideal curriculum "should include the teaching of oral and written communication in *every* course in the curriculum. This should then be bolstered by a separate legal writing, reasoning, and research program in which the central focus is the expression itself."[26] This Article's discussion of the three goals and ideas and methods for achieving them hopefully will be useful to those who plan curricula for all types of law school courses.

First, the law school curriculum should teach law students methods for using writing to help them analyze and apply legal authorities.

ING WHAT COMES NATURALLY (1989). For thoughtful discussion of the nature of the discourse of the interpretive community of the law, see generally JAMES BOYD WHITE, HERACLES BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW (1985); JAMES BOYD WHITE, THE LEGAL IMAGINATION (1985).

23. For discussion of the implications of the "community of discourse" metaphor for legal writing, see Joseph M. Williams, *On the Maturing of Legal Writers, Two Models of Growth and Development*, 1 LEGAL WRITING 1, 9-16 (1991).

24. *See, e.g.*, Stanley Fish, *Fish v. Fiss*, 36 STAN. L. REV. 1325, 1327 (1984). Commenting on the article, Brook Baker noted that answers to a question such as "what is a good [basketball] shot?" will be "unintelligible to the uninitiated and largely superfluous to the initiated.... [W]e are largely wasting our breath when we [say to law students], 'construct a compelling argument.'" Brook K. Baker, *Conventionalism, Contextualism, and Interpretative Communities: Are These Helpful Theories for Legal Writing Instructors?* 7-9 (1991)(unpublished manuscript, on file with the *Nebraska Law Review*).

25. *See* George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 357 (1987)(noting that in 1987, the author was aware of only one program with the three-year writing program that "logic and sound pedagogy demand").

26. Brody, *supra* note 3, at 9.

It should provide them with writing-to-learn tools they can use to explore, organize, and clarify their thoughts as they research and analyze legal problems, first in law school and then in practice.

Second, the law school curriculum should provide students with the "tools of the trade" by teaching students to create effective professional documents. Students should learn to recognize the rhetorical contexts in which lawyers write these documents and to consider the purpose and intended audience for every document they create. To help students develop the writing and critical reading skills they will need in practice, the curriculum should provide a variety of opportunities for students to create and use a wide variety of professional documents.

Finally, the curriculum should afford opportunities for students to use writing as a means to examine their roles as interpreters of legal tradition and factual situations as they undertake to resolve legal problems posed by clients or societal conditions. Writing assignments that require students to consider complex facts and competing social policies expose students to the kinds of rhetorical choices lawyers must make—and the consequences of those choices—in constructing arguments on behalf of clients, developing and expressing legal analysis of social issues, and establishing their own voices as professionals.

II. WRITING AS A TOOL FOR ANALYZING AND APPLYING LEGAL AUTHORITIES

Sometimes lawyers and law teachers who say that law students don't write very well refer to sloppy aspects of documents, such as poor citation form or imprecise word choices. More often, however, when asked what is wrong with the writing, they say such things as, "either it's all garbled and I can't tell what they're talking about, or else it stays at such an abstract level that they're not talking about anything at all."[27] These sorts of writing problems suggest that the novice legal writers have not yet sufficiently refined their analyses to clearly communicate their ideas.[28]

In the first year of law school, traditional legal writing classes support substantive course work by focusing students' attention on the process of legal reasoning and the structure of argument. Even legal writing courses that do not purport to teach legal analysis fulfill this function to some degree because presentation and content are often

27. Interview with Marlene Nicholson, Professor of Law, DePaul University College of Law. These remarks occurred during a conversation on an elevated train in Chicago, sometime in the late 1980s. Although she may not recall the conversation, her remarks have informed my teaching ever since, and I thank her now.

28. Williams, *supra* note 23, at 22.

inseparable in practice, and analytic and communicative skills develop together.[29]

For example, if beginning law students are asked what they had for breakfast, they can respond with clear and concise reports. Likewise, if asked to summarize a court's reasoning on a particular point, most can provide a coherent summary.[30] But if the same group is asked to reconcile two apparently conflicting cases and to apply the resulting principle to a set of client facts, the quality of the students' responses likely will vary. Many of those responses will be "all garbled" or so abstract as to be useless.

Resolving the thinking problems underlying unclear communication is exactly what law school teaches.[31] To think like a lawyer, a law

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29. "Thinking, communicating and searching are inseparable processes. Thinking about a subject requires both an understanding of others' oral and written communications and the ability to articulate, and thus communicate, one's own developed understanding." Edwin H. Greenebaum, *How Professionals (Including Legal Educators) "Treat" Their Clients*, 37 J. LEGAL EDUC. 554, 563 (1987). *See also* George Kamberelis, *Genre as Institutionally Informed Social Practice*, 6 J. CONTEMP. LEGAL ISSUES 115, 151 (Spring 1995).

> Although all of us may be able to speak and write well for ourselves and for particular (and usually quite constrained) purposes, many of us are unfamiliar with many ways of speaking and writing, as well as how these different ways are inextricably related to particular contexts, communicative events, audiences, rhetorical purposes and conventions. We must learn that discursive forms and thematic content that are appropriate in one context or situation may not be so appropriate in another. Because of the ways that text, contexts, and intertextual relations are so inextricably tied up with one another, the ability to compose an exceptionally powerful historical analysis of the dismantling of the Berlin Wall, for example, in no way guarantees that the same person could compose even an adequate closing statement for use in a court of law. Such a situation is probably not attributable to the increased difficulty of the latter task in comparison with the former. More likely it is the case that this writer has had more exposure to and more experience with history genres than legal genres. And this exposure and experience probably occurred in the context of a long socialization process within the discipline of history, wherein the person engaged repeatedly in the practices of constructing, thinking about, talking about, and critiquing various kinds of historical analyses, as well as a host of other everyday practices in which historians typically engage.

Id.

30. Williams, *supra* note 23, at 19.

> To a new teacher of legal writing, the most dismaying characteristic of papers is that they are all summary and no analysis. (In fact, no complaint is more common than that in all fields.) Given what we now know about the way novices behave, it is also the most predictable.

Id.

31. *See* Leigh Hunt Greenhaw, *"To Say What the Law Is": Learning the Practice of Legal Rhetoric*, 29 VAL. U. L. REV. 861, 884-85 (1995).

> Students learn critical reading through classroom discussion and dissection of constitutions, statutes, cases, and regulations. They learn [that] these authorities are responses to situations, and learn how to use them as resources to respond to new situations, through orally responding to

student must learn to identify relationships among ideas on multiple levels of abstraction and use this information to solve problems.[32] To construct proof of a legal conclusion, the student must build new mental structures to house the new ideas and then organize them in relation to each other.[33] To present that argument to a reader, the student must be able to articulate each step along the path of logic by which she reached the conclusion.[34]

A. Using Writing to Diagnose Thinking Problems

A component part of the process of building new mental structures is the collapse of existing schemes.[35] Often faults in the existing structures become apparent only when students must communicate their analyses.[36] Whether speaking in class or composing at the key-

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varied situations posed by hypotheticals and problems. Both the student orally responding in the class and the student writer make a claim concerning the meaning of legal authorities on particular facts.

However, composing a written response to a legal rhetorical situation affords a different learning experience than oral classroom responses. The writer commits to a claim in a more definite and enduring sense. A written argument can be more precisely phrased and is not as easily revoked or modified. The writer generally takes more time to respond, which allows greater investigation of facts and possibly applicable written authorities. Therefore, the writer is more likely to appreciate how the situation affects and defines his or her legal response. Such appreciation of the situation gives greater context and direction to the reading of legal authorities than does reading for classroom discussion.

Id.

32. *See* Katherine Simmons Yagerman, *Clear Thinking for Students of Legal Writing*, SECOND DRAFT (Legal Writing Inst., Seattle, Wash.), Aug. 1988, at 9.

33. For a straightforward and concise discussion of cognitive psychology and schema theory and how they may apply to legal education, see John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275, 277-83 (1989). A more detailed and technical discussion of cognitive science applied to legal education is presented in Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995). *See also* Greenebaum, *supra* note 29, at 555-56 (discussing cognition as an individual act of discovery and the process of perceiving and conceiving ideas).

34. "[T]hinking like a lawyer is inseparable from speaking, acting, and writing like a lawyer. The goal of the first-year curriculum may be better described as learning to 'say what the law is.'" Greenhaw, *supra* note 31, at 896.

35. *See* Robert Glaser, *Education and Thinking: The Role of Knowledge*, 39 AM. PSYCHOLOGIST 93, 101 (1984)(suggesting that teachers "provide a beginning knowledge structure . . . by teaching temporary models as scaffolds for new information"); Mitchell, *supra* note 33, at 284.

36. *See* Mitchell, *supra* note 33, at 289. Even people who are accustomed to being considered good writers often experience this phenomenon. *See also* Williams, *supra* note 23, at 21-22. Professor Williams illustrated this point with an example of a first-year law student with a strong background in academic writing who

> thought she might be developing a degenerative brain disorder [because she] could no longer write clear, concise English prose. She was in fact experiencing a breakdown like that experienced by many students tak-

board, when students attempt to communicate to a not-always-accepting audience the complex relationships of ideas that support their arguments, students sometimes must face an awful truth: they cannot explain the reasoning that supports their conclusions.

This inability to articulate analysis may be very frightening to law students who often are accustomed to understanding things immediately and intuitively grasping "what the teacher wants."[37] This ability served them well in undergraduate study and even on the Law School Admissions Test, where scores reward the ability to recognize logical relationships, but perhaps not the ability to articulate those relationships.[38]

For many law students, law school represents the first intellectual challenge of their academic careers, the first time that an intuitive grasp of class materials will not, by itself, enable them to excel. This presents an additional problem for first-year law students: not only do they not know what to do, many of them don't know what to do when they don't know what to do. The new experience of uncertainty in an academic setting may cause students great discomfort and angst[39] and may be the "scare'm to death" part of law school.

Yet, since knowing-what-to-do-when-you-don't-know-what-to-do may be the single essential lawyering skill, students should face this awful truth early and often. Accordingly, law professors, particularly in the first year, should insist that students examine the structure of the legal framework they have devised. Through repeated efforts to articulate logic on paper, students transform their intuitive recognition of relationships among ideas into a conscious analytic process, susceptible to examination and change.[40]

Legal writing courses are particularly useful for this purpose because they require students to reveal their thought processes on pa-

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> ing an introductory course in a complex field—a period of cognitive overload, a condition that predictably degrades our powers of written expression.

Id.

37. Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9, 16-19 (1990).

38. Although the Law School Admissions Test includes a writing section, the section is not scored and probably is of limited usefulness in law school admissions decisions. *See* Matthew J. Arnold, *The Lack of Basic Writing Skills and Its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 246-47 (1995). "The current writing section gives test-takers thirty minutes to read a fact pattern, outline an argument on scratch paper, and attempt to write a few coherent paragraphs." *Id.*

39. Carney, *supra* note 37, at 16-19.

40. *See* Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996); Paula Lustbader, *Why Law Students Construct Faulty Analysis and Pedagogical Strategies to Build Solid Foundations: Insights from Learning Theory* (July 15, 1994)(unpublished manuscript, on file with the *Nebraska Law Review*).

per. As Brook Baker has observed, when a student produces a piece of legal writing, she also provides a "snapshot" of the state of her understanding at the time she created the document, permitting her legal writing teacher to identify and evaluate thinking problems and, ideally, to help the student resolve them.[41]

For example, a student's paper that is "all garbled" may reveal an inability to recognize the organizing principle that would delineate a clear progression from familiar material to unfamiliar material, from general identification of the issue to specifics of the analysis.[42] Another student's paper might present a snapshot of a double-exposed image in which the writing is unclear because the author has not organized the discussion so that it finishes explaining one point before beginning the next. This clarity problem might be the result of inexperience in discussing alternative grounds supporting a conclusion.

In summary, students' writing reveals aspects of their thinking processes that may not be apparent from class discussion. The ways in which students organize discussions of legal issues reflect their understanding of the relationships of ideas; the gaps in logic may reveal gaps in understanding or unchallenged assumptions. Teachers who read students' writing gain insight into the thought processes of the individual students in their classes, their particular points of view and insights, as well as their difficulties, and the general level of understanding of the group.

B. Using Writing to Promote Clear Thinking

Diagnosing thinking problems is a first step. Finding ways to resolve those problems is the next, and it is one that writing may facilitate. The law school curriculum should provide students with writing-to-learn tools they can use to explore, organize, and clarify their thoughts as they research and analyze legal problems.[43] Learning ways to use writing as a study skill is especially important in the first year.

To provide writing tools for clear thinking, the legal writing curriculum should acquaint students with the standard models for organizing legal discussions. These organizational schemes include standard ways of dividing presentation of legal analysis, such as discussing the

41. Brook K. Baker, *Diagnosing Legal Writing Problems: Theoretical and Practical Perspectives for Giving Feedback* (July 1990)(unpublished manuscript, on file with the *Nebraska Law Review*).

42. *See* Williams, *supra* note 23, at 22.

43. Reed Dickerson noted that the process of writing can help research. "Research is inefficient unless we know what we are looking for, and trying to express and systematize a fuzzy question helps us sharpen it." Reed Dickerson, *Legal Drafting: Writing as Thinking, Or, Talk-Back from Your Draft and How to Exploit It*, 29 J. LEGAL EDUC. 373, 375 (1978).

elements of a cause of action one at a time. Organizational schemes also should include standard ways of presenting the pieces of the analysis in the order the reader expects, such as discussing liability issues first and then remedies, and standard ways of using syllogisms to structure the discussion of each point.[44] Working through the process of revising the organization of a legal discussion demonstrates to students not only that clear thinking promotes clear writing, but also that clear writing promotes clear thinking.[45]

When commenting on papers, a teacher can show students precisely where their writing is unclear, pose questions designed to illuminate thinking problems underlying the unclear communication,[46] and provide models for expressing analysis more clearly.[47] To respond to the questions, students must confront their failures to communicate and then examine their thought processes on paper. Answering the questions in the context of their own work provides students with the experiential basis that will permit them to understand why the models are useful and to incorporate into their own thinking those aspects of the models that permit more straightforward expression of legal analysis.

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44. The standard legal writing texts teach this convention in various forms. *See, e.g.*, CHARLES R. CALLEROS, LEGAL METHOD AND WRITING 58-60 (2d ed. 1994)(IRAC—Issue, Rule, Application, Conclusion); JOHN C. DERNBACH ET AL., A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD 113 (2d ed. 1995)("[F]or each issue or sub-issue, describe the applicable law before applying it to the factual situation."); LINDA HOLDEMAN EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 86-88 (1996)("Paradigm for a Working Draft" breaks IRAC down to "rule explanation" and "rule application"); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE 83-95 (2d ed. 1994)("a paradigm for structuring proof of a conclusion of law"); DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH 163-70 (2d ed. 1993)(IRAC—Issue, Rule, Application, Conclusion); HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW 106-17 (3d ed. 1995)("small-scale organization").

45. *See generally* Barbara Fassler Walvoord & Hoke L. Smith, *Coaching the Process of Writing*, *in* NEW DIRECTIONS FOR TEACHING AND LEARNING: TEACHING WRITING IN ALL DISCIPLINES (C. Williams Griffin ed., 1982).

46. *See* Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885 (1991).

47. For example, the student whose writing suggested that she did not understand the organizing principles that would permit her to explain her analysis straightforwardly might benefit from a model exemplifying the conventions for organizing a legal discussion, such as organizing by element of the prima facie case or using syllogisms to structure proof. For the student whose writing suggested that she was intermingling discussion of alternative grounds for her conclusion, examples of different methods of reasoning (for example, applying rules; synthesizing and proving rules; and reasoning by analogy and distinction) and different kinds of argument (for example, doctrine-based; fact-based; policy-based; and procedural arguments) may be useful.

Writing-to-learn activities include briefing individual cases to analyze the courts' decisions,[48] charting the elements and key facts of a group of related cases to synthesize the law,[49] outlining legal doctrine or arguments to organize analysis in linear form,[50] and free-writing to explore ideas and shift focus from minutiae to policy concerns presented by a legal problem, or to summarize conclusions.[51] Each technique provides an immediately useful study tool for law students.

The same writing-to-learn techniques that help students study law in school will be useful to them in practice. When lawyers approach legal problems, they must identify, analyze, and apply the applicable legal authorities. Very often they will create case summaries, charts, or outlines to help them understand and synthesize the authorities in relation to client facts as they analyze clients' legal problems. By teaching writing as a way to learn, law school classes provide techniques by which students can conduct their own "continuing legal education" in professional skills.

Discussing writing-to-learn techniques in the context of a problem-based course[52] increases students' awareness that the purpose for which a document is created dictates its form. For example, a case brief created for class or examination preparation likely will be quite different from a summary of the same case prepared in the course of researching a particular legal problem presented by a client.

In addition, teaching writing in a problem-based course permits discussion of "real world" practice in which writing-to-learn documents, especially outlines, are used to communicate with collaborating colleagues. Discussing the ways in which notes, outlines, and

48. *See, e.g.*, WILLIAM P. STATSKY & R. JOHN WERNET, JR., CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING 1-138 (4th ed. 1995).

49. *See, e.g.*, GERTRUDE BLOCK, EFFECTIVE LEGAL WRITING 145 (4th ed. 1992); SHAPO, *supra* note 44, at 135.

50. *See* CALLEROS, *supra* note 44, at 117-35; EDWARDS, *supra* note 44, at 15-79.

51. For example, I have often used an in-class writing exercise to accompany a research and writing assignment in which students prepare a working outline of their research and an analysis of a client's problem that the "assigning attorney" will use to prepare for a settlement negotiation. On the day students submit their outlines, I give them a short memo from the assigning attorney thanking them for their outlines and requesting that they write—in the next 20 minutes—a short cover memo summarizing their analysis and identifying any factual questions whose answers might change the analysis. Students are not allowed to use their outlines or notes to write the memo; later I explain that while it is unlikely that anyone would ask them to write without notes in "real life," it is quite common for an assigning attorney to ask for an oral summary of research and analysis, and some attorneys find this kind of "free-writing" helps focus their thoughts.

52. *See, e.g.*, Kathleen S. Bean, *Writing Assignments in Law School Classes*, 37 J. LEGAL EDUC. 276 (1987); Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992). *See also* Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653, 669-77 (1993).

other kinds of preliminary drafts are used in practice dispels the "but it's just for me" complaint often raised by students who are asked to submit outlines or other prewriting documents before submitting the final draft of a writing assignment. It also provides an opportunity to discuss practical aspects of the context for this writing. In practice, a lawyer may work on a single matter over a period of years and may devote attention to numerous matters in a single day. When the intended audience for a document is its author only, these circumstances should be considered in determining whether the writing serves its purpose. In addition, discussion of the professional context in which these problem-solving techniques are used offers opportunities to foster development of professional values and skills.

For example, in a first-year writing class, one assignment that teaches organization and reasoning and provides a model for an in-house document is a "working outline," which is generated as students research and prepare to draft a memo or brief. Although an outline's primary purpose might be to enable the researcher to organize her legal analysis, in practice this document might also be useful to other attorneys working on the case. After students have generated their outlines, they can be asked to collaborate with other students in the class, using outlines to help them interview, counsel, and seek additional facts from the "client" in a simulation exercise.

C. Using Writing-to-Learn Activities to Complement Traditional Teaching Methods

First-year and upper-level courses that focus primarily on writing and research are particularly well-suited for use of writing as a tool for learning because these classes tend to be small and because evaluation is usually based on a series of assignments, rather than a single examination. Writing-to-learn activities, however, may also enrich students' experiences in classes that do not have "writing" in their titles, including large classes.[53] Writing assignments afford opportunities to appeal to learning styles and preferences other than those most often implicated in lecture-discussion or Socratic-style classes,[54] to evaluate students' thinking outside the classroom "oral performance" context,[55] and to provide models for collegial problem-solving.

53. Writing exercises may be especially appropriate in large classes as a way to combat passivity and to encourage students to involve themselves in the issues under discussion rather than to simply "watch class."

54. For a discussion of the Myers-Briggs Type Indicator and law students' learning styles, see Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995). *See also* ALICE M. FAIRHURST & LISA L. FAIRHURST, EFFECTIVE TEACHING, EFFECTIVE LEARNING (1995).

55. *See* Stropus, *supra* note 40.

Writing assignments permit students to articulate their analyses without the "hotseat" of classroom performance and without the benefit of visual cues from the teacher and other students. Although Socratic-style classes tend to be rewarding to extroverts who think best while interacting with others, they may be daunting to students who prefer to think things through before communicating with others,[56] or who, for whatever reasons, feel themselves to be outsiders in the law school classroom.[57] Using writing as a tool for learning may permit these students to do their best work—and to learn how to do their best work.[58] In addition, while reading textbooks appeals to visual learners and listening in class appeals to auditory learners, writing-to-learn exercises provide an additional mode of study that appeals to tactile learners.[59]

To serve these purposes, writing exercises need not always be graded or even collected by the teacher, and they need not be elaborate. If the teacher does read the students' writing, she often may be able to provide sufficient feedback in the form of general comments to the class, rather than by commenting on individual students' papers. Students may garner additional feedback on their efforts through a variety of channels, including class discussion, small-group projects, and comparison of their work to model answers provided by the teacher.

On the other hand, although reading students' writing is time-consuming for teachers, it may serve the additional purpose of class preparation by providing the teacher with a more complete sense of the

56. For a discussion of this and other differences in learning styles and their effects on classroom interactions, see generally GORDON LAWRENCE, PEOPLE TYPES AND TIGER STRIPES (2d ed. 1982).

57. *See* Stropus, *supra* note 40, at 462-65. For a thoughtful and thorough discussion of the deleterious effects of isolation on law school performance, see Cathaleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 ARIZ. L. REV. 667 (1994). For discussion of experiences of women law students, see generally Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 4 (1994)("Women self-report much lower levels of class participation than do men for all three years of law school."); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988). *See also* Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 139-46 (1988).

58. For example, one commentator noted that one way to teach students how to read statutes is to have them write statutes. Jack Stark, *Teaching Statutory Law*, 44 J. LEGAL EDUC. 579, 580 (1994). A detailed discussion of theory and methods for teaching a combined criminal law and legal writing course is presented in Michelle S. Simon, *Teaching Writing Through Substance: The Integration of Legal Writing with All Deliberate Speed*, 42 DEPAUL L. REV. 619 (1992).

59. For an accessible and interesting discussion of these kinds of learning style differences, see Lynn M. Willeford, *What's Your Style*, NEW AGE J., Sept.-Oct. 1993, at 114. Students enjoy this article, and I am grateful to Ruta Stropus for sharing it with me.

class's progress than may be evident in class discussion.[60] In addition, when reading students' writing, teachers are able to evaluate the analytic process underlying an individual student's work without the pressure of attending to the needs of the entire class.

For example, a simple assignment asking students to respond in writing to questions or exercises based on assigned reading can achieve important purposes. This assignment can teach critical reading skills;[61] it can afford the teacher a measure by which to assess the students' progress and problems;[62] and it can provide students with a rehearsal for the examination. Finally, this sort of writing assignment tends to improve the quality of class discussion.[63]

Students who complete even a small number of writing projects may show marked improvement in their mastery of course material. John Burman wrote that when he revised the syllabus in his torts class to require students to complete two graded written assignments before taking the final exam, he found that the students "appeared to have learned the material better than in my previous classes, and the assignments had provided a second method of evaluating students that rewarded different abilities."[64] Regarding those students' performance on the final exam, which he described as his "typical exam," Burman stated that

> [t]he results were gratifying. Although the class average was similar to the previous year's there was a significant difference: I found no bad exams. No exams were even close to a D—a rare occurrence in a first-year course. In particular, students did a much better job of discerning the issues, organizing their answers, and discussing the elements of the defenses to those claims.[65]

This approach also permitted Burman to give a ninety-minute, rather than a two-hour exam, and thereby reduced the time necessary to grade exams at the end of the semester.[66]

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60. *See, e.g.*, John M. Burman, *Out-of-Class Assignments as a Method of Teaching and Evaluating Law Students*, 42 J. LEGAL EDUC. 447, 457 (1992); Katherine Pratt, *Using Graded Assignments: The Benefits and Burdens*, LAW TEACHER, Fall 1993, at 7.
61. *See* Kissam, *supra* note 15, at 152-57. Many textbooks include questions and problems that could be used as short writing assignments. *See, e.g.*, JOSEPH W. GLANNON, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS (3d ed. 1997).
62. Yagerman, *supra* note 32, at 4.
63. For a wealth of ideas for using writing to enhance learning in doctrinal courses, see Kissam, *supra* note 15, at 151-70.
64. Burman, *supra* note 60, at 453.
65. *Id.* at 452-53.
66. *Id.* at 452 n.19. Philip Kissam identified reasons why in-class "Blue Book" exams may be less effective in promoting critical writing and analytic skills:

> The style and substance of the thought and writing required by Blue Book exams—good paragraph thinking and writing—appear to be closer in nature to the thought process that is typically used in oral communication rather than serious writing. Blue Book writing about issues, rules, and rule application must be done quickly, with little time for the critical organization of materials and ideas, the reflection, and the feed-

Writing during class time also can be an effective teaching method. The time spent on in-class writing need not be extensive and is not lost; the benefits of involving all students in a communicative activity may outweigh the loss of time available for oral discussion. One very effective in-class writing assignment is the "three-minute thesis."[67] For this exercise, students are asked to spend three minutes responding in writing to a question posed by the teacher. Although time spent writing does reduce the time available for oral discussion, it may improve the quality of that discussion because it gives the introverts silent time to collect their thoughts while at the same time involving all students in the question. After students have written in response to a question, the teacher can call on anyone and expect a thoughtful answer.

This classroom exercise may be used in various ways to encourage students to actively engage with the class materials—and to combat passivity. For example, the exercise could be used to begin class, providing students a time to shift gears and focus on the class. Questions designed to serve this purpose might ask students to discuss in writing their intellectual responses to a case or cases assigned for that class. In particular, the quality of class discussion may be markedly improved by asking students at the beginning of class to write for three minutes on the question the teacher plans to use to begin discussion.

In the middle of class, when students' energy may wane or attention wander, the "three-minute thesis" may be used to change pace, spark discussion, and teach students to form the habit of asking themselves questions as they think about material.[68] At the end of class,

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> back from one's own written words that constitute the heart of most effective thinking and writing about complex matters. In other words, Blue Book thinking and writing must be performed in a relatively precise but simple style, a style that is surely a hallmark of oral communication rather than serious writing. Thus, Blue Book thinking and communication approximates a strange, one-sided conversation or, at best, a superficial kind of "instrumental writing" that translates a student's instant thoughts about complex matters into written form immediately. Blue Book communication does not approximate the good "critical writing" that can help writers develop the analytical abilities demanded by legal interpretation, evaluation, and planning.

Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 455 (1989)(citations omitted).

67. Joel Geske, *Overcoming the Drawbacks of the Large Lecture Class*, 40 C. TEACHING 151, 153 (1992).

68. *See* Deegan, *supra* note 20, at 154. In a study of reading strategies used by law students, Professor Deegan found that students who ranked in the top quartile of their law school class were significantly more likely than lower performing students to use a reading strategy of "problematizing," that is, of raising and resolving questions about the meaning and structure of a text as they read.

the exercise may be useful to encourage students to summarize and process material or identify additional questions.

Writing also may be used in the context of collaborative exercises, which may involve writing in or out of class. For example, individual students could be asked to write an evaluation of a situation from the point of view of different parties and then compare their written responses to other students' responses. Another exercise might ask a group of students to undertake a task, such as drafting a settlement agreement, and produce a single collaborative document.[69]

In summary, writing-to-learn exercises can be used throughout the law school curriculum to acquaint students with methods they can use to clarify their thoughts throughout their professional careers. In first-year legal writing classes, writing exercises that require students to focus on the structure of legal analysis help students understand legal authorities, delineate relationships among authorities, and articulate the logic by which they may apply authorities to facts to reach a legal conclusion. After the first year, classes that focus on written expression, such as appellate advocacy, trial advocacy, and clinical courses, provide opportunities to use writing-to-learn assignments to improve efficiency and effectiveness in researching law and facts, preparing documents or oral presentations, and collaborating with colleagues.

The role of writing as a tool for learning in doctrinal courses may not be as immediately apparent as it is in courses in which the primary focus is on written communication or other lawyering skills, but it should not be overlooked. Reed Dickerson described the role of writing in the thinking process: "[I]n the course of writing, the author, after what may seem like trying to strike a damp match, soon finds that he is party to a two-way conversation. The manuscript is talking back to him."[70] Encouraging students to engage in "two-way conversations" with their texts complements Socratic-style and discussion

69. Assigning writing projects to collaborative groups of students not only cuts down the time necessary to read and respond to documents, but also may contribute to the students' development of professional judgment. *See* Kenneth Brufee, *The Art of Collaborative Learning: Making the Most of Knowledgeable Peers*, CHANGE, Mar.-Apr. 1987, at 42 (discussing a study of medical students that showed that students who learned diagnosis in collaborative groups acquired better medical judgment faster than individuals working alone). *See also* Kenneth Brufee, *Collaborative Learning and the "Conversation of Mankind,"* 46 COLLEGE ENG. 635, 645-47 (1984)(noting that students join the knowledge communities to which they aspire by talking, writing, and thinking with "knowledgeable peers"). Lawyers collaborate in practice, and group work teaches important lessons in communication and cooperation. For a detailed discussion of a "law firm" approach to teaching writing in law school, see Bari R. Burke, *Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context*, 52 MONT. L. REV. 373 (1991).

70. Dickerson, *supra* note 43, at 375.

classes by offering students a medium for expression and reflection, for creative and critical thinking.

III. WRITING SKILLS AS "TOOLS OF THE TRADE"

Lawyers are professional writers.[71] To become good lawyers, law students must learn how to produce professional quality documents. Accordingly, a law school education should acquaint students with the rhetorical contexts[72] and standard forms for professional documents.[73] Students also should become acquainted with the standard of quality expected of legal writing. Further, students should learn how to read and revise their own writing to create documents that meet professional standards and serve their intended purposes and audiences.

Opportunities exist throughout the law school curriculum to acquaint students with the forms, functions, and professional standards of legal writing. Legal documents and the extent to which those documents serve their purposes and audiences are at the core of a variety of doctrinal courses such as contracts, civil procedure, and wills and trusts. Practice courses, such as pretrial litigation and trial advocacy, involve preparation of professional documents in a simulated professional context. Clinical courses and externships provide opportunities to create documents that may, in fact, affect events in the real world.[74]

A. Acquainting Students with Functions and Forms of Professional Documents

To produce effective documents, students must appreciate the lawyer's role as a communicator who uses language to help others make important and difficult decisions,[75] and they must understand how legal analysis is presented in the standard genres of legal writing. By acquainting students with the various purposes, audiences, and com-

71. William L. Prosser, *English as She Is Wrote*, 7 J. LEGAL EDUC. 155, 156 (1954)(Law is "one of the principal literary professions. One might hazard the supposition that the average lawyer in the course of a lifetime does more writing than a novelist.").

72. This term refers to the purposes for which the document is created or used, the audience or audiences for that document, and the voice of the author of the document. *See generally* VEDA R. CHARROW ET AL., CLEAR AND EFFECTIVE LEGAL WRITING 85-129 (2d ed. 1995).

73. Learning the genres of legal writing involves becoming aware of the practical and rhetorical contexts of the communications, not simply their forms. One commentator has observed that "learning the genres of institutions and disciplines is more like learning languages than learning algorithms. It is accomplished within and through immersion in the lifeworld of the community." Kamberelis, *supra* note 29, at 150.

74. *See generally* Campbell, *supra* note 52.

75. *See* NEUMANN, *supra* note 44, at 51.

mon formats for legal documents, the law school writing program allows students to practice the roles of advisor, advocate, and drafter, and it provides students with the "tools of the trade" they will need to represent their clients in practice.

1. Introducing Purposes and Audiences for Legal Writing

The lawyer, like any other writer, writes within a rhetorical context. Whether a document is intended to predict, persuade, or define rights and duties, it is directed to a particular audience and is intended to accomplish a particular purpose. To create an effective document, students must understand both the purpose for which the document is written and the attributes of its target audience and any additional audience it is likely to reach.[76] Neither of these requirements is likely to be intuitively obvious to the novice legal writer. A document may have multiple goals, and its intended reader may be unlike any audience for whom law students have ever written.[77]

This intended reader is likely to be busy. Such a reader requires a document that closely conforms to her expectations as a reader and, therefore, is easily accessible.[78] In addition, the audience for legal writing is inherently hostile.[79] Even if the document is written for a colleague, its reader will be vigilant in searching for opposing lines of argument, flaws in logic, and practical problems that might cause difficulties if she was to rely on the analysis communicated in the document.[80]

To communicate effectively with these readers, the legal writer must understand the audience's attributes and needs, as well as the legal analysis itself. Understanding the rhetorical context permits students to exercise professional judgment in preparing documents. For example, students who understand the purpose and audience for a document not only know that their research must be thorough and accurate, but they also can appreciate what "thorough and accurate research" means in a specific situation and can recognize which authorities contribute to the analysis of the problem and which are superfluous. They can make reasoned choices as to the degree of detail to use in explaining their analyses and how best to communicate their conclusions. Accordingly, when students approach a writing task, they should be encouraged to ask what the document is intended to

76. For a straightforward and clear discussion of the audiences for whom lawyers write, see CHARROW, *supra* note 72, at 97-118.
77. NEUMANN, *supra* note 44, at 50-51.
78. George D. Gopen, Oral Presentation at Duke University Faculty Workshop (Dec. 9-10, 1994). *See* K.K. DuVivier, *Proper Words in Proper Places*, 24 COLO. LAW. 27 (1995).
79. *See, e.g.*, NEUMANN, *supra* note 44, at 49-50.
80. *Id.*

accomplish, to consider the attributes of its intended audience, and then to direct all efforts toward accomplishing that purpose with that audience.

Teachers can enhance students' understanding of the rhetorical contexts for legal writing by structuring exercises in which students are asked to use the sorts of documents they are learning to prepare for the purposes those documents are intended to serve. This exercise gives students the experience of reading the documents from the standpoint of their intended audiences. For example, first-year students who are learning how to write an office memorandum could be cast in the role of "assigning attorneys," given a memorandum prepared for them by a law clerk, and asked to advise the client based on the memorandum.[81] Students learning to write briefs to be filed in court could be asked to assume the role of judges and to decide a case based only on the parties' briefs. These exercises provide students with simulated experiential bases from which to understand the purposes and audiences for their documents and to make choices that will help them craft effective documents in practice. More elaborate simulations and live client clinical experiences provide even more guidance.

Assigning writing problems that require students to create documents they will later prepare in practice provides students with an experiential base upon which they may build in summer clerkships and when they begin to practice. In addition, as students work through problems, they learn specific practical lessons—lessons they should learn before they practice—about hierarchy of authority, settled versus unsettled issues, and avoiding "overkill."[82]

When commenting on papers, teachers can draw upon their own professional understanding, attitudes, and instincts to inform students about the audiences for the document. Margin-comments that

81. For several years I have used this exercise after students submitted a first draft of their first formal legal memorandum. The rationale for the exercise is that students who understand the needs of their readers will be better able to satisfy those needs. Using a short, clearly written memorandum as the text, I identify and then delete portions of the memo that beginning law students often omit from their memoranda, such as conclusions, key facts, and reasoning from precedent cases, synthesis, and application of those cases to client facts. In class, I ask students to assume the role of "assigning attorneys," distribute copies of the altered memo, and tell them that the client will be coming to the office for advice later that day. First alone and then in groups, students are asked to outline the advice they will give the client and any questions they would like to ask the law clerk who wrote the memo. After the room has buzzed for a while, I assume the role of the author of the memo, and the students ask their questions. Invariably they request the deleted portions of the memo, and we discuss the reasons those portions are important to the readers of in-house memoranda.

82. Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298, 311-14 (1980).

express the reactions that the document likely would elicit from its intended readers can help students keep the focus on the goals for that document.[83] Comments that show students the dialogue between the document and its reader help students make conscious choices about how best to communicate with that reader.[84]

2. *Providing Models of Effective Legal Writing*

Legal writing programs may prepare students to communicate effectively in the professional context by exposing students to models of good writing in a variety of formats and encouraging students to evaluate the degrees to which these documents accomplish their purposes. Opportunities to provide models of effective legal writing exist throughout the curriculum in legal writing classes,[85] drafting classes, advocacy classes, clinics, seminars,[86] and doctrinal classes.[87]

Providing models of effective legal writing to law students does carry some risk, especially if students are given only a single model of a particular kind of document. Students may seek to use it as a template from which to create all documents of that type or, not yet having sufficient experience in the genre to recognize what is good about the model document, may emulate its less desirable attributes. To use models of legal writing effectively, teachers should try to provide more than one example of "good writing" in a particular format. Further, teachers should devote some time to discussing the reasons why the

83. *See* Baker, *supra* note 41, at 16.

84. Gopen, *supra* note 78 (observing that teachers who want students to become better writers should give them a better audience than the "great red pen in the sky").

85. Particularly in the first year of law school, students read mostly cases and occasionally hornbooks. Their encounters with statutes and contractual language tend to be limited to the portions of those documents reprinted in judicial opinions. Only rarely do they read memoranda, briefs, and law review articles. Moreover, the cases students read often expose them to the worst aspects of legal writing, such as legalese, extremely lengthy sentences and paragraphs, and "nouniness." *See* Phelps, *supra* note 19, at 1102 ("Law students too frequently acquire the new 'tribal speech' by imitating the style of the appellate opinions they read, by quoting judges' words at length, and by incorporating alienating and stuffy legalese.").

86. It is not surprising that seminar teachers often complain that papers are descriptive rather than analytical; for many students, the undergraduate term paper is their only model for scholarly writing. A collection of well-written law review articles, ideally in the subject area of the seminar, would be a useful resource for students in law school seminars. *See* ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (1995).

87. Using model documents in doctrinal courses provides the added educational benefit of showing students how the doctrine and policies discussed in case law are translated into documents in practice. *See* Scott J. Burnham, Oral Presentation at the Association of American Law Schools Workshop (Jan. 3, 1991). *See also* SCOTT J. BURNHAM, DRAFTING CONTRACTS (2d ed. 1993).

examples are good and assessing the comparative strengths and weaknesses of the model documents. By developing a list of the desirable attributes for a particular kind of document and asking students to evaluate the models against those criteria, teachers may help students recognize and emulate effective legal writing.

B. Teaching Students to Produce Professional-Quality Documents

Recognizing effective legal writing is one thing; creating one's own may be another. The relationships of the ideas to be communicated are complicated, and they reverberate on multiple levels of abstraction.[88] Moreover, because the audience is inherently hostile, it is not enough that the writer present sound analysis; the writer must *demonstrate* to the reader that the analysis is sound. As Richard Neumann has observed, "[w]hen it comes to clarity, *you will never get the benefit of the doubt.*"[89] A student who has been accustomed to relying on intuitive understanding and a good ear may reach the limits of those gifts in law school.

In any event, a good ear is only as good as what it has heard. Inexperience with structures of legal reasoning and unfamiliarity with the conventions and forms of legal writing may lead law students to incorporate into their writing the worst aspects of legal and law-related genres: the lengthy and complicated sentences and the the page-long paragraphs often found in appellate opinions assigned in law school classes; the overuse of abstract nouns and forms of the verb "to be," common to some kinds of academic writing;[90] and the repetitive and opaque jargon known as "legalese."[91]

Law students who have satisfied the writing requirements in their academic careers on the strength of intuitive communication skills must learn how to make conscious choices about their writing.[92] Unlike a letter to a friend (or perhaps an undergraduate term paper) in which the first draft is the final product, the first complete draft of a legal document often is merely an early step in the writing process. Once the draft is on paper, the student can evaluate the success of the document and begin to revise it so that it will better serve its purpose, provided, that is, that the student possesses sufficient critical reading and composition skills to do so.

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88. *See* Yagerman, *supra* note 32.
89. *See* NEUMANN, *supra* note 44, at 185.
90. *See* JOSEPH M. WILLIAMS, STYLE: TEN LESSONS IN CLARITY AND GRACE 5-9 (5th ed. 1996).
91. *See* RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS 57-60 (3d ed. 1994); Gopen, *supra* note 25, at 334-39.
92. *See* NEUMANN, *supra* note 44, at 61 ("Learning how to write like a lawyer is the beginning of learning how to make professional decisions.").

Peter Elbow has described two kinds of thinking involved in the writing process:

> First order thinking is intuitive and creative and does not strive for conscious direction or control. We use it when we get hunches or see gestalts, when we sense analogies or ride on metaphors or arrange the pieces in a collage. We use it when we write fast without censoring, and let the words lead us to associations and intuitions we had not foreseen. Second order thinking is conscious, directed, controlled thinking. We steer; we scrutinize each link in the chain. Second order thinking is committed to accuracy and strives for logic and control: we examine our premises and assess the validity of each inference. Second order thinking is what most people have in mind when they talk about "critical thinking."[93]

Both kinds of thinking are essential to good legal writing, and they are enhanced by different approaches to writing. Uncensored, exploratory writing tends to generate creative thinking; revising that writing enhances critical thinking.[94] Accordingly, one of the most important tasks a law school writing program should undertake is to teach students the recursive process of conceptualizing, drafting, and revising to produce professional-quality documents.[95]

Many first-year law students lack these skills. They may experience feelings of frustration in their first-year legal writing classes because, in addition to being novice writers in the legal writing genre, they are unaccustomed to revising their writing at all. The task of encouraging students to view the first draft as one point in the writing process, rather than its final product, is easier said than done. Not only are students unlikely to be easily persuaded to abandon writing strategies that have worked perfectly well in the past, they may not even be aware of their own writing strategies. Exercises that encourage students to reflect on their writing processes may help them find ways to make those processes more efficient.[96]

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93. Peter Elbow, *Teaching Thinking by Teaching Writing*, CHANGE, Sept. 1983, at 37.

94. *Id.* at 37. For a more thorough discussion of the two processes and ways to use writing to enhance them, see PETER ELBOW, WRITING WITHOUT TEACHERS (1973); PETER ELBOW, WRITING WITH POWER (1981).

95. Many of the standard legal writing texts discuss a process for producing legal writing. *See, e.g.*, NEUMANN, *supra* note 44, at 55-60; PRATT, *supra* note 44, at 188-99; SHAPO, *supra* note 44, at 127-40. A recent textbook designed for first-year students takes a process approach to legal writing. EDWARDS, *supra* note 44. A textbook designed for upper-level writing courses discusses ways to examine and improve writing habits, to use technology efficiently, and to collaborate effectively with other writers. MARY B. RAY & BARBARA J. COX, BEYOND THE BASICS: A TEXT FOR ADVANCED LEGAL WRITING (1991).

96. A useful exercise may be as simple as asking students to think about something they have written and then describe the process by which they wrote it. Anne Ruggles Gere, Oral Presentation at the 1996 Legal Writing Institute Conference (July 19, 1996). *See also* JOHN K. DITIBERIO & GEORGE H. JENSON, WRITING AND PERSONALITY (1995)(discussing approaches to writing commonly employed by the various Myers-Briggs personality types).

In any event, a mere admonition to write multiple drafts probably will provide insufficient guidance to enable many students to use the process of revising to produce more effective prose. Students who see the first draft as the end product may not even be able to proofread for grammatical errors—the personal stake in finding no errors is too high. Reading for analytic clarity is far more difficult than proofreading because the analysis is perfectly clear to its author, although it may be not at all clear to another reader.[97]

Accordingly, teachers should offer students methods by which they can begin to look at their own work critically and improve their thought processes as well as revise the document. For example, a critique that simply identifies a writing problem ("unclear") for a student probably is insufficient. The teacher must also ask—and encourage students to ask—what caused this problem and what strategies will help fix it.

A variety of techniques may help students learn to make conscious choices when revising their writing. For example, teachers can provide a checklist of questions for students to answer as they read their own writing.[98] Checklists help students develop an internal editorial voice by providing models for the questions students should ask themselves when they evaluate their writing.

Similarly, when teachers read students' papers, they can write margin-comments in the form of questions that reflect the questions the intended reader might have concerning specific parts of the documents. Question-style comments help students read their own documents from the standpoint of their intended readers. When students respond to the questions, they become aware that some of the analytic steps they have taken in their thinking do not appear on the written page. In so doing, students become actively involved in reading the comments. They gain better understanding of their writing problems and how to resolve them than they are likely to glean from descriptive comments, such as "poor organization," or general exhortations, such as "work on organization."[99]

Effective criticism should encourage students to recognize some of the common "gremlins"[100] of legal writing, that is, patterns of sentence and paragraph construction that often are present in documents that are unnecessarily difficult to read. These constructions include

97. One commentator discussing this problem offered the image of a coffee stain on a document: the stain brings back vivid and meaningful memories to the person who spilled the coffee, but to no one else. George D. Gopen, Oral Presentation at the Conference of the Legal Writing Institute (July 1988).

98. *See, e.g.*, NEUMANN, *supra* note 44 (inside front and back covers); SHAPO, *supra* note 44, at 87-89.

99. Baker, *supra* note 24, at 9.

100. This term is borrowed from DON K. FERGUSON, GRAMMAR GREMLINS (1995).

the passive voice, multiple negatives, lengthy quotations, words that end with "tion" or "ence" (especially in sentences in which the verb is some form of "to be"), repeated use of "also" or "additionally" as transitions, and page-long paragraphs.[101] These patterns provide visual cues to alert the author that clarity problems may exist where they appear. These visual cues enable the writer to "trouble-shoot" for specific points that may need revision and thereby help the writer gain sufficient editorial distance from the prose to evaluate it critically.

Teachers can reinforce the students' responses through individual conferences in which students discuss their writing as works-in-progress. For example, when reading and commenting on students' papers, a teacher can assign to each student a "revision task," tailored to a particular weakness in the paper, to be completed before the conference. During the conference, the teacher can ask the student to explain her revisions and how and why she made them. This written and oral dialogue encourages students to make conscious choices about their writing. Through articulating the steps by which she resolved a specific problem in a specific paper, a student may develop generalizable skills that will be useful in future writing projects.[102]

Students can gain additional experience in reading and revising by reading each others' writing. Peer review exercises, in which students read and comment on portions of documents written by other students in the class, offer opportunities for students to see how other writers approached a particular writing assignment, to evaluate the strengths and weaknesses of their approaches, and to learn from the critiques of their classmates. In addition, well-constructed peer-review exercises can help students learn how to give and receive constructive criticism when collaborating with colleagues, as they will be asked to do in practice.[103]

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101. *See generally* CHARROW, *supra* note 72, at 150-85; TERRI LECLERCQ, GUIDE TO LEGAL WRITING STYLE (1995); WYDICK, *supra* note 91.

102. Another possible outcome, however, is that the teacher will realize that she has misdiagnosed the source of problems in a student's writing. This, too, is useful information. For an excellent discussion of the importance of talking to students when evaluating their writing, see Anne Enquist, *Beyond Labelling Student Writing Problems: Why Would a Bright Person Make This Mistake?*, SECOND DRAFT (Legal Writing Inst., Seattle, Wash.), Sept. 1989, at 10-14. *See also* Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725 (1989).

103. Some students may not like the idea of having other students review their work, either because they find it threatening or because they do not believe other students are sufficiently knowledgeable to provide useful criticism. Some ways to guard against potential problems include the following: choose a portion of a draft for peer review, rather than the entire document; provide specific questions for the reviewers to discuss in their critique of the paper; organize the exercise in groups of three to five students so students can review and hear reviews of several papers; at least at first, organize face-to-face, rather than anonymous, reviews; before, during, and after the exercise, discuss the role of collaboration in

The following is an example of a process-oriented approach to teaching used in a first-year legal writing class: after completing a series of writing assignments for which the relevant authorities were supplied by the teacher, students were assigned a memorandum for which they would do their own research. When the students submitted their memoranda, their teacher noted three common problems: (1) although students had previously demonstrated ability to organize by legal principle, in this assignment many had lapsed into a case-by-case organization that failed to effectively synthesize the authorities effectively; (2) students' discussions of case law tended to focus on tangential material rather than key reasoning; and (3) students relied on quoting judicial language instead of articulating each step of the logic supporting the conclusions they asserted.

In attempting to diagnose the source of these problems, the teacher evaluated the circumstances of the assignment and generated a hypothesis. Although students had previously completed assignments in which they synthesized the case law their teacher had provided and applied law to fact for each element and subelement of a claim, this was the first project that required the students, themselves, to find and select the relevant legal authorities. Under these circumstances, the students' previously developed "synthesizing" skills may have been overcome by the urge to photocopy everything in the library, an urge that often grips students who are inexperienced in—and insecure about—doing legal research. Students may have lacked confidence to discuss authorities selectively because they were not sure that they had made the "right" choices. Finally, students may have substituted lengthy quotations for case analysis because they were afraid to face the possibility that they had made poor case choices or because they had underestimated the time it would take to find the authorities and therefore did not have time to think carefully about the authorities.

Based on this assessment, the teacher assigned the following activities: an in-class writing exercise that asked students to respond to the overall question the memo addressed, without referring to their notes or cases, and thereby focus on the big picture; individual conferences with the teacher structured around specific revision tasks, such as substituting paraphrases for all quotations or constructing an "IRAC" (Issue, Rule, Application, Conclusion) outline of each point of the discussion; and a checklist of questions for students to answer as to why they chose each case cited in their memoranda, what each case contributes to analysis of the client's problem, how the case relates to other cited authorities, what reasoning is key, and whether that key

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practice; and have students reflect on the experience in writing (these reflections can be anonymous). The goal is to keep the focus on the document as a work-in-progress, rather than on its author.

reasoning actually appears in the memo.[104] These activities are tailored to encourage students to construct discussions of case law in a way that serves the purpose of the memorandum, to communicate analysis of a client's legal problem, and to evaluate the strength of the client's legal position. Other activities could have been assigned to pursue these or other educational objectives.

A process approach to writing is most appropriate in courses that have a primary focus on written communication skills, such as legal writing courses, document planning and drafting courses, pretrial litigation, and seminars in which a research paper is assigned. Nevertheless, teachers of doctrinal courses also can use writing to enhance critical thinking by assigning out-of-class writing assignments with sufficient time for students to reflect on their drafts, perhaps by making the final exam or some portion of it a "take-home exam." The underlying purpose, whether in first-year writing courses or in upper-level classes that seek to promote competence in written communication, should be to provide the tools students need to recognize their writing problems and strengths. With these tools, students may identify methods for resolving problems and build upon newly developed strengths in future writing projects.

IV. WRITING AS A TOOL FOR CONSTRUCTING MEANING

Finally, writing throughout the law school curriculum enhances law students' ability to interpret factual situations through the lens of law.[105] As James Boyd White has written, "the imagination of the lawyer is more than a capacity for pretending or for perceiving; it is also a power that organizes what is seen and claims a meaning for it."[106] Legal writing classes, clinical courses, seminars, and "problem-

104. Questions might include the following:
—to what issue does this case relate?
—what does it contribute to your understanding of that point? (does it state the rule? define a term? provide a useful analogy?)
—where does your memo make that point?

105. "Law schools are typically good at teaching students about theory and bad at teaching them about facts." David Simon Sokolow, *From Kurosawa to (Duncan) Kennedy: The Lessons of Rashomon for Current Legal Education*, 1991 WIS. L. REV. 969 (discussing a fascinating experiment in using the film "Rashomon" to stimulate appellate advocacy students to think about the power of facts and factual interpretation). *See also* Gale, *supra* note 82, at 312-13; Walter O. Weyrauch, *Fact Consciousness*, 46 J. LEGAL EDUC. 263 (1996).

106. JAMES BOYD WHITE, THE LEGAL IMAGINATION 143 (abridged ed. 1985).
> I think a fundamental distinction can be drawn between the mind that tells a story and the mind that gives reasons: one finds its meaning in representations of events as they occur in time, in imagined experience; the other, in systematic or theoretical explanations, in the exposition of the conceptual order or structure. One is given to narrative, the other to analysis. Each works in its own way, and it is hard to imagine a conver-

method" classes are particularly well suited to encourage students to explore through writing the rhetorical process by which lawyers construct meaning.[107] In addition, writing assignments afford opportunities for students to develop their "professional voices"[108] and to examine the beliefs and attitudes concerning the law that will shape their professional identities.

A. Using Writing to Examine the Process of Interpreting Law and Fact

Constructing a legal argument is an interpretive process that seeks to draw a line of reasoning that connects infinite, random, and constantly changing circumstances to an abstract notion of Good and Right.[109] The reasoning may track lines of abstractions from con-

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> sation between them . . .; but however inconsistent these voices seem, the lawyer must recognize both of them within himself.

Id. The difference between narrative and analytic understanding has important implications for legal education. *See* Philip N. Meyer, *Fingers Pointing at the Moon: New Perspectives on Teaching Legal Writing and Analysis*, 25 CONN. L. REV. 777, 777-82 (1993). Professor Meyer has observed that our thought processes have become "predominantly cinematic: we now think in images rather than words .... [S]tudents [who] struggle to process . . . 'theoretical' information . . . cannot 'find the issue because they literally cannot see it.'" *Id.* at 781-82.

107. *See* James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 684 (1985).

108. *See* Rideout & Ramsfield, *supra* note 13, at 64 ("Through [students' participation in the legal writing classroom] they will also be constructing themselves, rhetorically, as lawyer-writers, a construction that entails the development of a writer's personal and professional voice."). *Cf.* Julius G. Getman, *Colloquy: Human Voice in Legal Discourse*, 66 TEX. L. REV. 577, 582 (1988).

> What disappoints me most about legal education is its undervaluing of "human voice," by which I mean language that uses ordinary concepts and familiar situations without professional ornamentation in order to analyze legal issues. The importance of this voice to the successful practice of law should be apparent. Its relation to professional voice is both subtle and important.

Id. See also E. Perry Hodges, *Writing in a Different Voice*, 66 TEX. L. REV. 629, 638 (1988).

> Students believe that one of the purposes of law school is to learn how to manipulate legal language, and they are right. But instead of understanding legal discourse as a dynamic product of complex historical, social, and personal forces, they treat it as an independent rational structure, built up of stable denotations that correspond to an objective reality. They fail to recognize that discourse is itself a polyphonic construct, coloring and colored by human experience.

Id.

109. *See* Yagerman, *supra* note 32, at 9. This article draws from general semantics theory, the concept of the "abstraction ladder," and discusses how it can be used to help law students develop awareness of levels of abstraction and the importance of spelling out each step of the logic that connects the concrete facts to the abstract principles. *See also* S.I. HAYAKAWA, LANGUAGE IN THOUGHT AND ACTION 153-66 (4th ed. 1978).

crete, physical "facts" through characterizations of those facts, through legal doctrines that categorize those facts, through the policies that legitimate those doctrines, to a final notion of that which is good or right. Because no single, perfect understanding of goodness or rightness is available, perfect proof of particular "facts" rarely is sufficient to support a conclusion of law.

For example, a lawyer developing an argument on behalf of a client seeks to connect the desired outcome to the ideal by distilling from the myriad factual circumstances the truth of the matter from the client's point of view: the story. This story implicates legal doctrine, which is interpreted so as to promote policy values that serve society. Conversely, as Robert Heidt has illustrated in an article for beginning law students, the advocate's selection of the governing legal rule may shape the story that the advocate will tell.[110]

Law students should have an opportunity to examine their roles as interpreters as they undertake to resolve legal problems. Life events draw meaning from the stories in which they are recounted, and the stories in which a single event may figure are innumerable and infinitely varied.[111] Narratives in law reflect the competing interests of parties and the competing principles that support those interests. Legal rules embody interpretations of legal authorities within the context of legal tradition.[112] Accordingly, when students construct statements of fact for memoranda and briefs, they engage in an interpretive act, and they should be aware that they are doing so—and alert to the possibility that they might be seeing only what they have already decided is there. This awareness is important to development not only of communication skills, but also of professional values.[113] A law school writing program should seek to socialize students

110. Robert Heidt, *Recasting Behavior: An Essay for Beginning Law Students*, 49 U. PITT. L. REV. 1065 (1988).

111. *Id.* at 1067.

112. Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527, 528-29 (1982). *Cf.* Gerald L. Bruns, *Law as Hermeneutics, in* THE POLITICS OF INTERPRETATION 315, 317 (W.J.T. Mitchell ed., 1982); Stanley Fish, *Working on the Chain Gang: Interpretation in Law and Literature*, 60 TEX. L. REV. 551 (1982).

113. *See* James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 WILLAMETTE L. REV. 45, 52 (1993).

> Learning law, practicing it as a lawyer, or teaching it, depends more than we have previously recognized on what we think and imagine of ourselves as persons. The continual exposure to law and legal thinking affects our inner world of images, emotions, and fantasies. Law and legal thinking, the talking and listening we do as lawyers, shape our view of the world and become a world view. Introspective writing is one means by which we connect our knowledge and our work with our subjectivity, our sense of self. Introspective writing validates subjective experience, bringing it into view, and gives it a place in professional life. Subjectivity surrounds our learning, our knowing, and our doing. Introspective writing brings the subjectivity that is always there back into

into the discourse of the law, but it must also urge students to recognize and question the boundaries of that discourse,[114] and to be aware of linguistic moves undertaken by other legal writers.[115]

B. Teaching Writing as an Interpretive Process

Any law school class in which students work through problems affords opportunities to think carefully about facts and how they relate to social policies underlying legal doctrine.[116] Writing assignments that require students to do this thinking on paper impose discipline on the thought process and encourage students to delve more deeply into interpretive possibilities and to explore various doctrinal responses to a particular set of circumstances. In particular, advocacy courses, seminars, clinical courses, and advanced courses that use writing as a tool of instruction provide opportunities for students to use writing to develop facility in constructing legal meaning from life events and circumstances.

1. Telling the Client's Story

To develop interpretive skills, students should be encouraged to examine the process by which lawyers construct legal meaning when they represent clients.[117] Typically, the lawyer begins by listening to

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> conscious awareness. Writing is one way that we relate to being as we unearth the stories we are living and the stories we hope to live.

Id.

114. *See* Elizabeth C. Britt et al., *Extending the Boundaries of Rhetoric in Legal Writing Pedagogy*, 10 J. BUS. & TECH. COMM. 213, 224 (1996).

> [A]n approach that centers on law as a discursive system should help students evaluate the kind of world advocated by the legal discourse they are being socialized into. Legal writing professors, with their sensitivity to the complex relationship between language and law, are in a unique position to help law students become not only good lawyers but also good citizens.

Id.

115. *See* Fajans & Falk, *supra* note 20, at 190-204. *See also* LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (1993).

116. *See generally* ROBERT S. COLES, THE CALL OF STORIES: TEACHING AND THE MORAL IMAGINATION (1989).

117. For an excellent discussion of this process and how it might be taught in the first year and in any advocacy course, see Abraham P. Ordover, *Teaching Sensitivity to Facts*, 66 NOTRE DAME L. REV. 813 (1991). Clark Cunningham has described the lawyer's role in presenting the client's story as that of a translator. Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992). Commenting on that article, James Boyd White stated that he especially admired Professor Cunningham's

> recognition of the kind of force that our languages have over our minds, both as we see the world and as we tell stories about it; his sense that what we think of as "events" are really texts calling for interpretation, and his consciousness that interpretation in turn is a mode of thought by

the client's problem or questioning and eliciting additional information from the client and others who may be involved in the situation. Sometimes this preliminary investigation of the circumstances will identify a single applicable legal doctrine. For example, if the client has been charged with a criminal offense, the lawyer's first concern likely will be to evaluate possible defenses against that charge. Often, however, the client's story may suggest numerous doctrinal responses from which the lawyer may select a course of action in counseling the client. The choice may be influenced by a variety of factors.

Sometimes the choice is constrained by a legal impediment to success in litigation. For example, an action to recover damages accruing from false and defamatory statements might be brought under a theory other than the obvious choice, defamation, if the plaintiff is a public figure.[118] In another situation, a lawyer might seek to bring suit under a breach of contract theory rather than in tort because the statute of limitations has expired for the tort cause of action. Similarly, the availability of particular remedies may influence the choice of legal theory. For example, a tort theory might be selected over a contract theory, even though the tort claim would entail more difficult proof problems, because the contract theory would permit the client to recover only compensatory damages unless the lawyer could persuade the court to expand the remedies available in a contract action to include punitive damages under the circumstances of this client's case.[119]

In addition, the client's own history in the legal system may constrain the choice. For example, if a party has argued that a particular analogy is inapposite to its business in one setting, the party may have difficulty asserting that analogy later in a setting where it would work to its advantage. Other times, a client's wishes concerning representations of herself or others may encourage or discourage the choice of a legal doctrine.

> which the practices of our own minds can be made the object of critical attention; his development of the idea that the practice of translation entails an ethic of respect for the difference and equality of persons; and his constant awareness that his own use of language, both as a lawyer . . . and as a scholar-critic writing about it, is an ethical performance, and one at which he—and in our turn we—not only can, but in some sense certainly will fail.

James Boyd White, *Translation as a Mode of Thought*, 77 CORNELL L. REV. 1388, 1399 (1992).

118. *See* Heidt, *supra* note 110, at 1071. Professor Heidt argues that the questions, "which story is true?" and "which description is correct?," are "questions for children." *Id.* at 1095. Techniques for "recasting behavior" include "emphasizing different aspects of behavior;" "using different contexts;" "using different time frames;" "expanding and collapsing behavior;" "using different perspectives;" and "using different degrees of specificity." *Id.* at 1080-94.

119. *See* CHARLES R. CALLEROS, TEACHER'S MANUAL, LEGAL METHOD AND WRITING 71-75 (2d ed. 1994).

When a relevant doctrine is identified, the lawyer often must seek additional facts to evaluate the strength of the case. Unless the specific facts clearly dictate the outcome, the lawyer must consider potential arguments and evaluate the extent to which policy values underlying the doctrine may or may not be furthered by the result the client seeks.

If the lawyer's analysis is directed toward persuading a court or other audience that the client's position is sound, the lawyer must articulate the client's story in light of applicable doctrine and public policy. The lawyer must persuade the decisionmaker that applicable law permits and urges, if not requires, the result the client seeks. Based on facts, doctrine, and policy values, the lawyer will identify a theory of the case. That theory will influence narrative choices, such as level of detail, organization, and word choice.

Writing teachers can foster awareness of the lawyer's role as interpreter by explicitly raising questions of purpose and audience for each document and exploring the ways in which the purpose and audience will affect the writer's choices. In particular, students should consider the purpose of the document not simply from the lawyer's perspective, but from the client's as well, and consider the ways in which the lawyer's own life experiences may affect her perceptions of the client's circumstances. Not only does the document purport to tell the client's story, it also "represents" that client to the legal system.[120] A lawyer's interpretive tasks may include explaining aspects of a client's interpretive community to an unfamiliar audience. For example, Charles Calleros described efforts to explain to a judge in an arbitration the cultural context surrounding a claim for damages arising from failure to deliver gowns for a Quinceanera,

> an event of social and religious significance to young women reaching the age of fifteen in traditional Latino Communities. In that arbitration . . . an expert witness explained the cultural, religious, and social significance of a Quinceanera . . . . [The] expert helped the Anglo-American judge understand the significance of a Quinceanera by comparing it to a formal Catholic wedding, an event with which the judge could more easily identify.[121]

120. *See* Cunningham, *supra* note 117. *See also* Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

121. Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 152 (1995). In that case, "the party advancing the cultural education ultimately prevailed." *Id.* at n.33 (citing Araiza v. Udave, No. CV88-05922 (Ariz. Super. Ct. 1989). Professor Calleros noted an additional case, this one concerning Alaskan Native Americans, in which the prevailing party similarly provided a cultural education to the judge. *Id.* (citing Brief for Carlos Frank, Frank v. State, 604 P.2d 1068 (Alaska Dist. Ct. 1979)(No. 75-2729), with reference to a presentation by Diana Pratt at the 1994 conference of the Legal Writing Institute). For a general discussion of judges' needs and preferences as readers, see, e.g., GIRVAN PECK, WRITING PERSUASIVE BRIEFS 75-78 (1984).

Even first-year legal writing courses can encourage students to think about the ways in which lawyers construct meaning in "the real world," where legal cases begin with lots of facts presented in no particular order by people who may be angry, hurt, or worried, and who may have differing points of view. To a lawyer describing a case to a colleague, it seems perfectly natural for the colleague to interrupt to ask "who are we?" (whom do we represent?) or "where are we?" (in what stage of litigation or in what court is the matter?). Students should have opportunities to explore the ways in which the answers to those questions will affect their perceptions of factual situations.

One simple way to do this is to present the hypothetical facts for writing assignments in the form a lawyer might acquire them, rather than setting them out in a prose summary. The "raw facts" need not be extensive, and preparing them need not be any more difficult than stating the facts in paragraph form. For example, a legal writing assignment "case file" might include a police report, a transcript of a client interview, and statements from witnesses, or it might include pleadings and discovery documents. More elaborate simulations might require students to find the relevant facts through interviews and written discovery. By presenting facts in a way that requires students to select and discard facts and devise appropriate organizational schemes, teachers encourage students to be aware of these choices and to consider them carefully.

These choices, of course, are constrained by the relevant legal authorities. Finding those authorities may be, itself, an exercise in interpretation. Legal analysis and research are inextricably linked; developing effective research strategies requires students to draw analogies on multiple levels of abstraction, particularly when the writer's task involves a choice of potential legal theories. Writing assignments that require students to find, select, and use primary authorities to analyze legal problems afford opportunities for students to develop interpretive skills.

a. In a First-Year Legal Writing Class

The following example illustrates one approach by which a traditional two-semester first-year legal research and writing sequence could focus on interpretive skills. A sequence of first-semester writing problems could be presented through a single evolving fact pattern for students to analyze under several legal doctrines. The fact pattern need not be complex. For example, a simple scenario of a client detained by a shopkeeper who suspected her of shoplifting could be analyzed under one or more criminal statutes and the tort of false imprisonment with a statutory defense available to shopkeepers.

The sequence could begin with a simulated client interview, or the teacher could provide an experience similar to listening to the client's

story by presenting some raw facts in the form of a transcript of a client interview. Additional facts could be "discovered" in a police report and in witnesses' statements. The sequence would illustrate the process by which lawyers gather facts by asking students to identify "missing" facts as they work on their written assignments and think of ways to acquire those facts, whether by posing questions to the client or by seeking discovery from other sources. This approach encourages students to think about "the facts" in terms of the process of investigation and analysis, rather than as a static hypothetical whose gaps in information leave them frustrated and believing that they cannot begin to analyze the problem until the facts are provided. The sequence exposes students to the various doctrinal approaches in a single problem by analyzing an evolving fact pattern under three different causes of action. This exercise shows them that different aspects of the client's story may be significant to analysis under different doctrines.

In addition, the first-semester sequence could provide opportunities to write documents for different audiences, such as a formal office memorandum to a colleague, an advice letter to the client, and perhaps a demand letter to the shopkeeper discussing the potential civil suit for false imprisonment. Presenting material to different audiences can illuminate interpretative choices and may reveal choices that were made without conscious thought.

A second-semester persuasive-writing sequence could emphasize the process of developing the theory of the case. Teachers may help students develop interpretive skills by constructing advocacy problems that suggest a variety of possible approaches and then assigning writing exercises designed to encourage students to develop their theories. Possible writing exercises include in-class writing in response to open-ended statements such as "my client should win because . . .;" short papers describing the dispute from the points of view of various people implicated in the dispute; negotiation exercises; advocacy journals that record students' questions and reactions concerning the case throughout the semester; and peer-review exercises to expose students to the approaches other students have taken in constructing the legal meaning of the parties' dispute. A particularly effective peer-review exercise asks students to read other students' statements of fact to compare the theories of the case they convey and the rhetorical techniques employed to promote that theory.[122] Within the context of a dispute, second-semester assignments again could

122. The peer-review questionnaire used by the Author asks the following questions:
Readers' Impressions
1. What did readers like best about the draft?
2. What, if any, difficulties did readers have in understanding the factual situation?
3. Did readers tend to identify with the party on whose behalf the draft was written? Why?

provide opportunities for students to write documents to a variety of audiences, such as an advice letter to the client, a demand letter to the adversary, a brief in support of a motion to a trial court, an appellate brief, and a settlement agreement.[123]

b. Throughout the Curriculum

Many law school courses afford opportunities for students to use writing as a tool for constructing meaning within the context of representing a client. In addition to writing courses, advocacy courses, advanced research courses, and clinical courses, doctrinal classes can be enriched by writing exercises in which students examine legal problems from various points of view. For example, students could be asked to draft memoranda or arguments on behalf of various parties, or to propose legislation or regulations and provide supporting memoranda discussing the clients' concerns, how the proposed language addresses those concerns, and why it should be adopted.

2. Finding One's Own Voice

In addition to offering students experiences in constructing arguments for clients, a law school writing curriculum should provide students the opportunity to "think on paper"[124] about justice and law reform, that is, to formulate and express original ideas concerning issues of importance to the students and to society. Law reviews, moot

4. Where, if at all, did the draft appear to cross the line from effective use of detail and word choice into the appearance of argument?
5. What, if any, theme (or theory of the case) emerged on first reading?
Nuts and Bolts
1. What, if any, legally significant facts are omitted?
2. Does the draft tell the reader where each fact may be found in the record? Are any of the record cites ambiguous?

123. For example, I have assigned second-semester students to write briefs in a case involving a dispute arising out of a speech made on a university campus by a cultural commentator. In the speech, the cultural commentator criticized a local politician and supported his critique with several letters the politician had written to her supporters during a campaign for political office. Although the facts suggest the politician's real concern is to silence her critic, the complaint alleges the speaker infringed upon the politician's copyright in her unpublished letters. This incongruity prompts class discussion of selection of doctrine. Observing that the plaintiff selects the cause of action, class discussion focuses on some of the factors constraining a plaintiff's choice. In this case, defamation, the cause of action that most nearly matches the politician's objections to the speech, is unavailable for several obvious reasons.

The cultural commentator's answer asserts the defense of fair use. Class discussion of the competing goals of the copyright laws and its fair use exception yields a variety of possibilities that might provide a theory of the case for each of the parties. As they craft their arguments, students are asked to consider how they can advance their theories of the case by their choices of authorities, facts, characterizations, and organizational schemes.

124. Philip C. Kissam, *Seminar Papers*, 40 J. LEGAL EDUC. 339-40 (1990).

court, seminars, legislation and policy-planning courses, and doctrinal courses all provide opportunities for students to use writing to help them think carefully about the factual context in which doctrine operates and the intended and unintended consequences of policy choices.

At the most formal level, preparing law review articles and seminar papers requires students to think deeply about legal issues at a societal level and take personal responsibility for the conclusions they reach. These projects are vehicles by which to "know one's subject and know oneself."[125] Unfortunately, teachers who supervise these projects often report disappointment with their students' papers. Often the papers are descriptive rather than analytic and discuss their topics no more deeply than an undergraduate term paper.[126]

The problem may be the result of unfamiliarity with the genre; it also may reflect the enormity of the task of defining a social problem, communicating its complexity, and proposing change. Students may need instruction in the process of defining a problem, explaining why that problem is of interest to the reader, and setting out the structure for analyzing the problem.[127] An instrumental approach to the document probably will not suffice. To do their best work—to think deeply and articulate those thoughts—students may need to produce a series of working documents, such as a proposal, a bibliographic essay, an introduction, and a draft and outline.[128] Supervising this process may require a substantial investment of time from the teacher; however, peer review of drafts is very effective in this context, benefitting both the writer and the reader, as is the feedback provided through a discussion following a seminar presentation.

In doctrinal classes or seminars in which a major paper is not assigned, shorter writing exercises may be used to develop interpretive skills. For example, students could be assigned to write position papers on issues in the course's subject area. These assignments may be valuable to students, even if the teacher does not critique each student's written work. Peer review, class presentations, or general comments to the class from the teacher can provide effective feedback to students without creating a crushing workload for the teacher. On the other hand, evaluating students' writing during the semester provides

125. Michael McChrystal, Oral Presentation at the American Association of Law Schools Annual Meeting, San Antonio (Jan. 6, 1992)(transcript on file with the *Nebraska Law Review*). Both purposes are important. Professor McChrystal observed that "[s]ome law students become so acculturated to viewing problems from the client's point of view that it is difficult for them to develop or discover or recognize their own points of view." *Id.*

126. *See* Williams, *supra* note 23, at 19.

127. FAJANS & FALK, *supra* note 86, at 15-34; Joseph M. Williams, Introductions and the Rhetoric of Problem Formulation, Oral Presentation at the Legal Writing Institute Conference, Chicago (July 29, 1994).

128. *See* FAJANS & FALK, *supra* note 86, at 47-84; Kissam, *supra* note 124, at 343-47.

students with feedback that may help them improve their work and also may benefit teachers by spreading the task of evaluation over the semester rather than concentrating it at the end of the course.

Another possible assignment is one Jane Rutherford uses in her Family Law class: "expert papers." For this assignment, students collect factual and legal information on topics relevant to the class and compile the information into outlines to be distributed to the class and introduced by three-to-four-minute class presentations by students.[129] The teacher does not comment upon or grade the outline. The students receive feedback on their work from presenting the work product to the class. Professor Rutherford reports that this method of feedback appears to provide sufficient motivation for students to prepare very useful outlines. In addition, because students must research factual as well as legal sources, preparing the expert papers forces students to confront their preconceptions concerning social conditions. As a side benefit, the teacher acquires a wealth of interesting information.

Finally, policy questions on final examinations, especially take-home examinations, are vehicles for students to discuss legal issues from a societal perspective.[130] In this context, writing assignments ask students to consider their synthesis of course materials in terms of possibly conflicting underlying social policies.

C. Using Writing to Encourage Self-Awareness and to Develop Professional Integrity

Writing that serves each of the three educational goals identified in this paper may also serve to foster a sense of professional identity in law students.[131] Writing-to-learn activities engender a sense of mastery in writers. The writers know how they reached their conclusions, and that knowledge permits them to revisit their analysis and consider alternative ways to approach the problem. The writers will not feel threatened when confronted with a differing view of the authorities; they will have the confidence necessary to meet that challenge. Assignments designed to acquaint students with the purposes, audiences, and forms of legal documents and with professional standards of quality also afford opportunities to discuss ethical issues that arise

129. Telephone interview with Jane Rutherford, Professor of Law, DePaul University College of Law (Nov. 29, 1994).

130. For an interesting method of using writing to introduce students to a variety of theoretical perspectives in a doctrinal class, see Anita Bernstein, *Perspectives on a Torts Course*, 43 J. LEGAL EDUC. 289 (1993).

131. For a thoughtful discussion of the development of professional identity through choices regarding professional roles and relationships and the impact of skills training on this process, see Greenebaum, *supra* note 29.

in the context of producing documents in practice and foster development of professional integrity.[132]

Writing activities that encourage conscious awareness of the process of interpretation require students to confront their understanding of legal issues and their own roles in the legal system.[133] Journals[134] and reflection papers[135] that ask students to reflect on difficult legal issues provide vehicles for connecting the study of law to personal experience[136] and for examining their own values.

In the practice of law, a number of forces conspire to tempt lawyers to compromise their standards of quality and ethical conduct or to discount their own professional judgment. By providing students with realistic professional writing experiences—including experiences in considering ethical questions raised in context—and experiences in examining the processes and content of their written communication, an effective law school writing curriculum provides not only "that its graduates possess basic competence in . . . written communication,"[137] but also that they have confidence in their abilities. These experiences may shield recent graduates from the sorts of ethical pressures to which the inexperienced are most susceptible.

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132. For a bleaker view, see Steven Stark, *Why Lawyers Can't Write*, 97 HARV. L. REV. 1389 (1984).

> Language is a human invention, one designed to bring people closer together. But after a lifetime of using words to strangle communication, lawyers begin to view speech as a barrier that separates themselves from others and others from the truth. . . . [L]awyers begin to despise their language, and their distaste reflects itself in poorly written prose. Why bother to write clearly if communication itself is a lie?

Id. at 1392.

133. "We inhabit a *nomos*—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void." Robert M. Cover, *The Supreme Court 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4 (1983).

134. *See, e.g.*, Patricia A. Cain, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections*, 38 J. LEGAL EDUC. 165 (1988)(discussing a course in feminist legal theory through excerpts from journals written by students in the class). Journals also can be used to track the writing process and encourage awareness of the underlying process of constructing meaning.

135. For a discussion of one professor's use of reflection papers in a class called Discrimination and the Law, see Frances L. Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511, 1546-71 (1991).

136. "The experience of learning law points to the inevitable conflict between everyday reality and our ideals." James R. Elkins, *A Quest for Meaning: Narrative Accounts of Legal Education*, 38 J. LEGAL EDUC. 577, 591 (1988)(discussing journals of first-year law students and the importance of reflecting on experiences in law school). *See also* Elkins, *supra* note 113.

137. ABA Standards, *supra* note 3, Standard 302(a)(ii).

V. CONCLUSION: WHAT IS THE "IDEAL" LAW SCHOOL WRITING PROGRAM?

No single explanation answers the question, "What is the ideal law school writing program?"[138] A law school's writing program necessarily reflects the traditions and resources of the law school because it is an integral part of that law school. What is clear, however, is that an effective law school writing program is one that promotes development of rhetorical skills throughout the law school curriculum.[139]

Producing effective legal writing is a complicated and difficult task that draws upon all aspects of a legal education. To communicate effectively, a lawyer must understand the substance that is to be communicated and must present precisely that information to its intended audience, and do so in a form that will accomplish the writer's purpose and will not defeat that purpose by its effect upon any additional audiences the document may reach. In helping students develop effective writing skills, a law school provides students with the tools by which they may practice their profession.

Writing throughout the curriculum helps students learn to use writing as a means of creating their own understanding of law and legal analysis, within the context of the community of legal discourse. Courses in which the primary focus is on written communication promote these values as well, by teaching students to use writing to learn

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138. Many excellent articles discuss aspects of specific law school writing programs. *See, e.g.*, Burke, *supra* note 69; Barbara J. Cox & Mary Barnard Ray, *Getting Dorothy Out of Kansas: The Importance of an Advanced Component to Legal Writing Programs*, 40 J. LEGAL EDUC. 351 (1990); Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96 (1994); Lucia A. Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203 (1995); Michelle S. Simon, *supra* note 58; John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law, the Legal Practicum*, 21 WM. MITCHELL L. REV. 111 (1995).

139. Law itself may be viewed as a branch of rhetoric, not only in the sense that lawyers seek to construct persuasive arguments on behalf of their clients, but also in a larger cultural sense.

> Law always operates through speakers located in particular times and places speaking to actual audiences about real people; its language is continuous with ordinary language; it always operates by narrative; it is not conceptual in its structure; it is perpetually reaffirmed or rejected in a social process; and it contains a system of internal translation by which it can reach a range of hearers. All these things mark it as a rhetorical system.

White, *supra* note 107, at 692. *See also* Greenhaw, *supra* note 31, at 872 ("The law is continually being made and remade from among competing claims for the meaning of its authoritative language."); Linda Levine & Kurt M. Sanders, *Thinking Like a Rhetor*, 43 J. LEGAL EDUC. 108, 121 (1993)(stating that "rhetoric unites the theory and practice of law"). For a critique of the "rhetoric of law," see Gerard Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 76 VA. L. REV. 1545 (1990).

as well as to communicate analysis to others, by providing writing experiences in the standard genres of legal writing, and by offering simulation-based exercises, collaborative activities, and opportunities to use "legal writing" documents for their intended purposes. Methods of instruction in these courses should be selected so as to appeal to different learning styles.[140] By teaching students to be aware of the processes by which they produce legal writing and to improve those processes, courses focusing on expression provide students with bridges from novice thinking to expert thinking.

In addition, however, writing courses are essential to teaching students how to make conscious decisions about their writing throughout the writing process and to promote the values inherent to the instrumental theory of composition: clarity of expression and conformity to formal requirements of legal documents. Documents that fail to conform to professional standards of quality impair the credibility of their authors and of the profession.[141] A sequence of courses that focuses primarily on written communication is essential to teaching technical proficiency and instilling professional standards of quality.[142]

Courses with a primary focus on written expression may include not only first-year legal writing, but also drafting courses, advocacy and other simulation courses, some clinical courses,[143] seminars in which students write scholarly papers, and language-based courses, such as law and literature or jurisprudence courses. Teaching these courses is time-consuming, and staffing decisions are often constrained by financial concerns. Too often, writing teachers have been treated as separate from the rest of the law school faculty, overworked and underpaid. Discussion of specific staffing models is beyond the scope of this article;[144] however, the educational goals discussed here

140. In addition to learning styles and preferences, teachers should be aware of the special needs of law students with learning disabilities. For a recent article providing guidance in this area, see Susan J. Adams, *Because They're Otherwise Qualified: Accommodating Learning Disabled Law Student Writers*, 46 J. LEGAL EDUC. 189 (1996).

141. For a cautionary tale, see Stephen J. Adler, *Not That Dumb*, AM. LAW., Jan.-Feb. 1988, at 128 (discussing a Senate judicial confirmation based in part on questions about his writing skills, and stating, "From now on, he would travel with an albatross: a reputation for stupidity.").

142. *See* TOM GOLDSTEIN & JETHRO K. LIEBERMAN, THE LAWYER'S GUIDE TO WRITING WELL (1989); Arnold, *supra* note 38; Lynn B. Squires, *A Writing Specialist in the Legal Research and Writing Curriculum*, 44 ALB. L. REV. 412 (1980).

143. *See* Kissam, *supra* note 15, at 171-72 ("Clinical education affords many opportunities for supervised student writing.... Indeed, a writing across the curriculum program in law schools could be viewed as representing just such an expansion of clinical methods.").

144. Regardless of the staffing-model, teaching assistants and writing specialists can make valuable contributions to a law school writing program. *See* Julie M. Cheslik, *Teaching Assistants: A Study of Their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394 (1994); Squires, *supra* note 142.

cannot be well-served in a school that does not value its writing curriculum and the faculty who teach it.[145]

Teaching writing throughout the law school curriculum is well worth the investment of time and resources. An effective law school writing program provides students with tools of self-education, enhancing the educational continuum throughout their professional careers.

145. The newly recodified standards for law school accreditation require that "law schools employing full-time legal writing instructors or directors shall provide conditions sufficient to attract well-qualified legal writing instructors or directors." ABA Standards, *supra* note 3, Standard 405(d). This standard reflects sound pedagogy both in its design to attract excellent teachers and in its recognition of the importance of their contributions to the law schools. Working conditions should include reasonable numbers of students per teacher, opportunities for professional development, and faculty status. When a law school does not value its writing teachers, it sends a signal to students that they are not receiving good training in writing and that the law school writing curriculum is irrelevant to their academic and professional success. That works a disservice to the students and to the profession.