



## ARTICLE

# Using Communities of Practice in the Legal Writing Classroom to Facilitate Professional Identity Formation

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The legal writing class is the heart and soul of the first-year experience. This is largely so because much of the vital work legal writing professors do is outside of the actual curriculum. In addition to teaching substantive legal writing skills, legal writing faculty also teach process-based skills—how to manage time, how to study effectively, how to maintain mental well-being, and how to begin to develop a professional identity. The professional identity aspect has taken on increased urgency in light of new ABA standard 303(b)(3), which requires law schools to help students develop professional identity “during each year of law school.”<sup>1</sup> The legal writing class, already the hub through which students gain information relating to managing other aspects of their law school experience, is a logical place to look for creative ways to foster the development of a professional identity. At the same time, legal writing faculty are keenly aware of the heavy curricular burden they already shoulder. Ideally, a creative way to foster professional identity development within the legal writing classroom will streamline rather than add to the already intense workload of legal writing faculty.

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<sup>1</sup> STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS., Chapter 3 (2023), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2023-2024/23-24-standards-ch3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf).

One way to facilitate professional identity development in the first year is to break the legal writing students into smaller groups that would meet throughout the school year and focus on various topics that advance these goals. Ideally, each group should be relatively small, no larger than five to ten students. This way, more group activities and other types of active learning will be possible in both the intra- and extra-curricular context. Groups would meet regularly outside of class time; the professor could establish the minimum number of monthly meetings, which group members could increase if they wish. All students could complete a brief survey so that groups can be set up based on interest—for example, students who wish to pursue a career in family law or transactional law. Alternatively, a professor might prefer to create the groups randomly to “let the chips fall where they may,” in terms of experiences and interests. Depending on the activity, and how it fits into the semester’s progression, the group could be led by the legal writing professor, a TA, or the students themselves. Rotating the group leadership will make all members feel more a part of the group community.

## 1. What are Communities of Practice?

Educational theorists have dubbed groups of the nature discussed above Communities of Practice (CoP). A CoP is “a group of people who share a common concern, a set of problems, or an interest in a topic and who come together to fulfill both individual and group goals. CoP focus on sharing best practices and creating new knowledge to advance a domain of professional practice.”<sup>2</sup> CoP are composed of people who share a concern or a passion for something they do, and learn how to do it better as they interact regularly.<sup>3</sup> There are three crucial characteristics of a community of practice:

**Domain**: A community of practice is not just a group of friends. Rather, it has an identity that is defined by a common interest that connects and holds together the community.<sup>4</sup>

**Community**: The community creates the social fabric of learning—a strong community fosters interactions and relationships based on mutual respect and trust. “It encourages a willingness to share ideas, expose one’s ignorance, ask

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<sup>2</sup> What is a Community of Practice? <https://www.communityofpractice.ca/background/what-is-a-community-of-practice/> (last visited December 11, 2023).

<sup>3</sup> The term was coined by educational theorist Etienne Wenger and anthropologist Jean Lave while studying apprenticeship as a learning model. They coined the term community of practice “to refer to the community that acts as a living curriculum for the apprentice.” Etienne Wenger-Trayner & Beverly Wenger-Trayner, *An introduction to communities of practice: a brief overview of the concept and its uses* (June 2015), available at <https://www.wenger-trayner.com/wp-content/uploads/2022/06/15-06-Brief-introduction-to-communities-of-practice.pdf>.

<sup>4</sup> *Id.* at 2.

difficult questions and listen carefully.”<sup>5</sup> The authors point out that feeling as if you are a member of a community is an important part of learning because learning involves “the heart as well as the head.”<sup>6</sup>

**Practice:** Members of a community of practice are practitioners; what they do informs their participation in the community, and what they learn from the community affects what they do.<sup>7</sup>

While some legal writing professors already effectively use CoP to teach writing and analysis,<sup>8</sup> they can also be used outside of the standard curriculum to enhance—and even streamline—the extracurricular learning the legal writing class typically supports. The benefits of CoP are indisputable, with research showing that these communities break down the typical barriers to learning. Learning communities such as CoP produce strong student outcomes in terms of “overall engagement, graduation rates, academic performance, and interacting with diverse people from different backgrounds.”<sup>9</sup> CoPs can also help teach students empathy, “a critical quality of an effective lawyer.”<sup>10</sup>

## 2. Communities of Practice in Professional School— Learning from Medicine

Now is a particularly opportune time to use CoPs in the legal writing cohort since they can help schools implement newly adopted ABA Standard 303(b)(3), which states: “A law school shall provide substantial opportunities to students for

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<sup>5</sup> Etienne Wenger et al., *Cultivating Communities of Practice: A Guide to Managing Knowledge* 28 (1st Ed. 2002).

<sup>6</sup> *Id.* at 28-29.

<sup>7</sup> Wenger-Trayner, *supra* note 4 at 2-3.

<sup>8</sup> Cristina D. Lockwood, *Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice*, 20 Clin. L. Rev. 95 (2013)(discussing how CoP can be used to help students learn research, writing, and analysis). CoP are also useful in other aspects of legal education. For example, one commentator has suggested that using CoP can strengthen the teaching of legal ethics education. Justine Rogers, *Legal Ethics Education: Seeking—and Creating—A Stronger Community of Practice*, 36 Georgetown J. of Legal Ethics 61 (Winter 2023). Another author discusses the Temple Law and Public Policy Program, which was designed using COP as its basic structure. Nancy J. Kramer, *Learning Communities: A New Model for Legal Education*, 7 Elon L. Rev. 193 (2015). Finally, in an address commemorating CUNY School of Law’s twentieth anniversary, Dean and Professor of Law Kristin Booth Glen used a CoP framework to discuss the overall structure of law school learning. She specifically referenced CUNY’s Community Legal Resource Network as an example of a shared community of learning. Kristin Booth Glen, *The Law School in and as Community*, 35 U. of Toledo L. Rev. 63 (Fall 2003).

<sup>9</sup> *Id.*

<sup>10</sup> Susan Greene, *Mindful Practices for Law Practice*, 46 Ohio N. U. L. Rev. 53, 54 (2020)(stating that “empathy allows us to understand the minds of others and to resonate emotionally with those states”)(citations omitted).

. . . the development of professional identity.”<sup>11</sup> Interpretation 303-5 further states that “[b]ecause developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.”<sup>12</sup> The definition of professional identity in Interpretation 303-5 of the ABA Standards is instructive:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.<sup>13</sup>

Other professional schools offer helpful insights for using CoPs to develop the professional identity of law students. In medical school, for example, professional development through patient-oriented care typically begins well before law schools expose students to clients. While it is not possible to integrate actual law practice with clients into the first year of law school, using CoP to add client-directed activities, such as simulations, could at least partially replicate the hands-on experience first year medical students receive. The teaching program at McGill University uses the following description to define the concept of a profession:

Profession: An occupation whose core element is work based upon the mastery of a complex body of knowledge and skills. . . Its members are governed by codes of ethics and profess a commitment to competence, integrity and morality, altruism, and the promotion of the public good within their domain. These commitments form the basis of a social contract between a profession and society. . . . Professions and their members are accountable to those served and to society.<sup>14</sup>

The physicians who created the McGill teaching program contend that in both law and medicine, educators must recognize this concept of the profession is the

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<sup>11</sup> STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS., § 303(b)(3) (2023), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2023-2024/23-24-standards-ch3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS., Interpretation 303-5 (2023), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2023-2024/23-24-standards-ch3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf).

<sup>14</sup> Sylvia R. Cruess & Richard L. Cruess, *From Teaching Professionalism to Supporting Professional Identity Formation: Lessons Learned from Medicine*, 68 Mercer L. Rev. 665, 668 (Spring 2017).

basis of the social contract with society, which allows for the delivery of essential services.<sup>15</sup> In both professions, the development of professional identity is crucial to becoming a member of the profession. The authors define professional identity in medicine as “a representation of self, achieved in stages over time during which the characteristics, values, and norms of the medical profession are internalized, resulting in an individual thinking, acting, and feeling like a physician.”<sup>16</sup> If you take out the words “medical” and “physician” and substitute “legal” and “lawyer,” this definition perfectly defines professional identity formation in law school as well.

A major difference between law school and medical school, though, is that in medical school, students work with patients from the very beginning. In legal education, “actually serving clients is largely deferred until after graduation.”<sup>17</sup> Certainly, opportunities to begin participating in some form in real client advocacy may begin as early as the second or third year, depending on a school’s experiential learning resources. But a CoP could offer first-year students the opportunity to gain exposure to client work earlier through simulations. The CoP could further enhance the simulation experience because the smaller group would offer both a logistically easier way to simulate client services and an already-formed group trust for the vulnerability of simulating client services. Simulations within a CoP would give students the opportunity to step outside of themselves, see what it is to walk in someone else’s shoes, and learn empathy.

### 3. Communities of Practice—Implementing without Overburdening.

Further, CoP can be used in many ways to teach professional identity within the legal writing class without overburdening legal writing faculty, whose plates tend already to be overfull. There are three areas in which the CoP-based framework could be used to develop professional identity within the legal writing context *without* increasing the professor’s work.

First, Teaching Assistants, whose more recent first-year experience complements the peer aspect of CoPs, could take the lead in CoP-based activities. TAs could act as clients in an assigned problem so that students can conduct a client interview and/or negotiate a settlement of the problem posed in the assignment. Further, acknowledging that career-related activities are often expected to dovetail with the legal writing curriculum—fairly or not—TAs could also conduct mock job interviews within the CoP framework. As with simulations,

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 676.

<sup>17</sup> *Id.* at 666.

this could permit students to develop their professional identities within an increasingly familiar and comfortable environment.

Second, subject-matter experts could work with the CoP—an already formed, smaller group of students who are comfortable with each other—to highlight basic concepts lawyers grapple with in forming professional identity. Ethical questions come up frequently in the practice of law, though many lawyers feel ill-equipped to deal with them. Recognizing these issues early on, ideally in the first year of law school and not while studying for the MPRE, can help students appreciate that being an ethical attorney is an important part of professional identity, and start to develop skills in ethical problem solving. A group leader with expertise in ethics, whether another faculty member or an outside speaker, could work with the CoP to introduce basic ethical concepts to students.

Third, CoPs are an ideal structure for developing the well-being practices referred to in the ABA's definition of professional identity. By starting in the first year of law school, students can carry them into their professional life post-graduation. Hofstra Law has a robust health and wellness program for students, encompassing a university-wide counseling center and a law-school-specific health and wellness program. Law students are often loath to avail themselves of these mental health services. First year CoP are the perfect setting to have experts from those departments come in and address common first year concerns, almost like a group critique for mental health. Ideally, these sessions would occur several weeks into the semester so the group has had time to become a community and individuals feel comfortable discussing these sensitive matters. If the CoP is functioning as it should, the group should be open to honest discussions about the stressors the students are facing and how to deal with them productively. This practice would necessarily exclude the professor and could even become an informal support group assuming the participants are willing.

## 4. Conclusion

CoP can provide a framework within the legal writing class for training first-year law students in professional identity development as required by ABA Standards. Medical education does a much better job than law school of creating practitioners from the very first day of school. It is important for educators in both disciplines to recognize that “[t]he central issue in learning is *becoming* a practitioner, not learning *about* practice.”<sup>18</sup> Artfully using CoP to structure activities that legal writing professors are already doing can help bridge that gap

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<sup>18</sup> *Id.* at 685.

and assist law students in developing professional identity sooner so they become “individuals whose behavior is professional because of what they have become.”<sup>19</sup>

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