

THE THIRD PARADIGM:¹ BRINGING LEGAL WRITING “OUT OF THE BOX” AND INTO THE MAINSTREAM: A MARRIAGE OF DOCTRINAL SUBJECT MATTER AND LEGAL WRITING DOCTRINE

*Laurie C. Kadoch**

I. INTRODUCTION

The paradox that ensnared “legal writing” courses from the moment they began to appear in law school curricula a little over two decades ago has become a topic of mainstream discussion, namely the paradox of a perceived chasm between theory and

¹ A paradigm shift is the “change that occurs in a discipline ‘when old methods won’t solve new problems.’” Theresa Godwin Phelps, *The New Legal Rhetoric*, 40 Sw. L.J. 1089, 1090 (1986) (citing Maxine Hairston’s *The Winds of Change: Thomas Kuhn and the Revolution in the Teaching of Writing*, 33 College Composition & Commun. 76 (1982) (citing Thomas Kuhn, *The Structure of Scientific Revolutions* 64 (2d ed., U. Chi. Press 1970)); see also Sid Jacobson, *Meta-Cation, Prescriptions for Some Ailing Educational Processes* (Meta Publications 1983) (discussing neuro-linguistic programming, paradoxes, education, and change). In talking about change, Jacobson suggests that

[t]he most pervasive and useful changes always seem to be the ones that develop out of an alternative framework or viewpoint. These usually grow out of some dissatisfaction with the status quo or a major stumbling block of some sort. This is true for philosophies, theologies, sciences, societies, organizations. . . . But the mere thought of alternative realities is confusing for most people. When people get confused, they get scared. When they get scared, they get angry. And when they get angry in numbers, they often choose up sides for a fight: polarization, the idea that “it” has got to be “either this or that.” The funny part is that “this or that” is seldom the issue. More often it is in the “either-or.” How about “both,” “neither,” or a combination of the two?

Anthropologist Desmond Morris once wrote that the “. . . human animal is remarkably good at blinding itself to the obvious if it happens to be particularly unappealing, and it is this self-blinding process that has caused so many of the present difficulties.”

There seems to be an unfortunate circular truth there: Belief systems die hard, sometimes only with the believer (or not even then). When what is necessary is a new belief system, we often get stuck. And it isn’t always the new system that is scary. Sometimes it is the change itself, or even just the thought of change. How do we make it so damned hard?

Jacobson, *supra* n. 1, at 5–6 (footnotes omitted).

* © 2007, Laurie C. Kadoch. All rights reserved. Professor of Law, Vermont Law School. The Author wishes to thank Evelyn Marcus for her support in the timely completion of this Article.

practice. In professional education, this paradox is unique to law and stems from three related fallacies. First, that there really is and should be a schism between the teaching of legal theory and the practice of the law, not just one unintentionally caused by the current educational model. Second, that “writing” curricula fall squarely on the practice side of the schism. Third, that the teaching of the practice of law and, therefore, legal writing, is devoid of intellectual heft. Current discussion about models of legal education that incorporate accepted theoretical underpinnings of law, legal studies, learning theory, and the cognitive sciences has begun to debunk the core belief supporting the imposed schism that only pure doctrinal courses have the intellectual heft necessary for inclusion in mainstream law school curricula. Perhaps unwittingly, the discussion necessitates questions about the continued validity of the marginalized position of so-called “legal writing” courses.² Legal writing curricula have evolved despite imposed handicaps, and are now poised for recognition as curricula that offer not only intellectual weight but also a bridge between theory and practice. The discussion reveals possible benefits of a shift from the current paradigm. It offers the potential for those of us “trapped on the practice side” to bring the discussion to the attention of those who can orchestrate critical change.³ It may help us work together with administrators to shift reality by re-framing⁴ the significance of what it is that we do and who we are in ways

² Legal writing scholars have been illuminating the fallacy of the split paradigm by writing for years about the intellectual heft of the courses they teach and the connections between doctrinal and “writing” curricula, but, unfortunately, because we write from within the box, the audience we need to reach has received the insights through the lens of the fallacy. The volumes of excellent scholarship written by the legal writing academy have garnered recognition of the significance of scholarship about legal writing. See Francis J. Ranney, *Aristotle’s Ethics and Legal Rhetoric* 28 (Ashgate Publg. Co. 2005) (providing insight into the source of the split paradigm of theory and practice); Steven L. Winter, *A Clearing in the Forest: Law, Life, and Mind* 41 (U. Chi. Press 2001) (providing insight into the fallacy of a linear segregated approach to legal education and the knowledge gained from contemporary cognitive science); Peggy A. Ertmer & Timothy J. Newby, *Behaviorism, Cognitivism, Constructivism: Comparing Critical Features from an Instructional Design Perspective*, 6 *Performance Improvement Q.* 50 (1993); Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 *Marq. L. Rev.* 887 (2002) (providing a history of the introduction of writing curricula); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 *S.D. L. Rev.* 347 (2001); see also *Selected Bibliography: Scholarship by Legal Writing Professors*, 11 *Leg. Writing* 3, 59 (2005).

³ See Douglas Stone et al., *Difficult Conversations* 147 (Penguin Bks. 1999).

⁴ See generally Joseph P. Folger et al., *Working through Conflict* 274 (Addison Wesley Longman, Inc. 2001). Conflict theory illuminates the need for shifted paradigms to change rather than manage the clash of realities (the conflict). See also Richard Bandler & John Grinder, *Reframing* (Real People Press 1982).

that benefit legal institutions, students, and the practice of law itself. Naming the paradox and recognizing its hold on the design of legal education is an essential preliminary step to any reframing.⁵

The paradox, and in turn, the split paradigm in whose breach legal writing abides, results from ancient debate over the essence of classical rhetoric.⁶ The term *rhetoric* was eternally tainted by the ancient Sophists, courtroom advocates, some of whom “were known for trying spurious lawsuits,” who unfortunately were also among the teachers of rhetoric.⁷ The disfavor that philosophers such as Plato attached to the term *rhetoric*, following the courtroom antics of the Sophists, also severed the once intimate association between law and rhetoric, “where to practice law meant to employ rhetoric.”⁸ In opposing the Sophists, Plato and other philosophers disregarded the multifaceted nature and “intellectual heft”⁹ that the study of classical rhetoric had brought to legal thought. Because of this history, legal rhetoric came to be seen by many as merely a manipulative use of language, a tool of persuasion devoid of either ethical or intellectual activity. From that time forth a prejudiced eye was often cast upon the term.¹⁰

On the other side of the debate, Aristotle continued to perceive the study of rhetoric as a deeper activity. Aristotle called it “a habit of the mind.”¹¹ The schism between law and rhetoric, which

⁵ *Id.*

⁶ Kristen K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 *Vt. L. Rev.* 483, 483 (2003) [hereinafter *Paradigm Lost*]; Kristen Konrad Robbins, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism between Doctrinal and Legal Writing Faculty*, 3 *J. ALWD* 108, 112 (2006) [hereinafter *Philosophy v. Rhetoric*].

⁷ Robbins, *Philosophy v. Rhetoric*, *supra* n. 6, at 112. Robbins distills the ancient argument over rhetoric in a way that mirrors the debate over the efficacy of teaching legal writing. She points out, “As early as the fifth century B.C., the Sophists, who were courtroom advocates as well as teachers of rhetoric, had already damaged rhetoric’s reputation. Some of the Sophists were known for trying spurious lawsuits, and thus ‘sophistry’ soon became associated with clever but false arguments.” *Id.*

⁸ Ranney, *supra* n. 2, at 2.

⁹ Robbins, *Philosophy v. Rhetoric*, *supra* n. 6, at 112.

¹⁰ *Id.*; see also Laurie C. Kadoch, *So Help Me God: Reflections on Language, Thought and the Rules of Evidence Remembered*, 9 *Rutgers J.L. & Relig.* 2 (forthcoming Fall 2007) (available at <http://org.law.rutgers.edu/publications/law-religion/forthcoming.shtml>).

¹¹ Ranney, *supra* n. 2, at 2. Ranney draws from Aristotle in explaining the conjunction of law and rhetoric that “both practice and theory[] are knowledge-making activities that are valuable for what they can contribute to our understanding of legal and ethical problems.” *Id.* at 1. She includes a paragraph from Aristotle’s *Nicomachean Ethics*, Book VII, which illustrates the use of rhetoric in the study of law as a meaning-making activity, as a “habit of the mind.” *Id.* Ranney includes an explanation by Aristotle of his approach:

has continued in various incarnations to the present time, has led to a loss “of a [once] coherent and all-encompassing approach to legal discourse,”¹² which connected the intellectual study of law with the intellectual practice of law.

Christopher Langdell, of the Harvard Law School, shared Plato’s narrow view of rhetoric, as well as the schism between the study of law and rhetoric, and made it a mainstay of American legal education.¹³ In 1870, Langdell reshaped the essence of the study of law, which had previously relied upon apprenticeships,¹⁴ when he declared that law was a science and thus should be taught scientifically.¹⁵ He maintained that the purpose of law school was “not to teach law students to churn out legal products” but rather “to teach a process, a method of inquiry, and a way of thinking, ‘like a lawyer.’”¹⁶ With these sentiments, Langdell severed theory from practice in legal education.¹⁷

Our proper course with this subject as with others will be to present the various views about it, after first reviewing the difficulties they involve, finally to establish all or, if not all, the greater part and the most important of the opinions generally held with respect to these states of mind; since if the discrepancies can be solved, and a residuum of correct opinion left standing, the true view will have been sufficiently established.

Id.

¹² Michael H. Frost, *Introduction to Classical Legal Rhetoric: A Lost Heritage* 6 (Ashgate Publ. Co. 2005); *see also* Kadoch, *supra* n. 10 (discussing the absence of oral narrative from the early English trial, perhaps as fallout from the schism between rhetoric and law begun by Plato and other philosophers).

[P]hilosophers long ago already recognized the need to examine the weaknesses inherent in a trial reliant upon the spoken word. Over two thousand years ago, Socrates singled out the link between language and thought for the focal point of his remarks to the jury that would decide whether he lived or died. This ancient philosopher understood the perplexity he faced in an oral trial, the necessity to mediate the fact that the mode of the speech event holds perhaps an even greater sway over the thought processes of the audience than the substantive content of the message. This is the same linguistic perplexity with which the Anglo-American rules of evidence have struggled since the trial moved into the courtroom and evolved into an oral adjudicatory process.

Id.

¹³ Frost, *supra* n. 12, at 12; Ranney, *supra* n. 2, at 3; Winter, *supra* n. 2, at 41; *see also* Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (Or Toy Story Too)*, 54 J. Leg. Educ. 471 (2004) (providing a broad perspective on the legal environment and the changes in legal education wrought by Langdell and perspectives of both his supporters and critics).

¹⁴ Kadoch, *supra* n. 10; Robbins, *Philosophy v. Rhetoric*, *supra* n. 6, at 121.

¹⁵ Robbins, *Paradigm Lost*, *supra* n. 6, at 483.

¹⁶ Ranney, *supra* n. 2, at 3.

¹⁷ Feldman, *supra* n. 13, at 475–479. Thereafter, law schools neglected a vital aspect of legal education, the engagement of law students (future lawyers) in intellectual thought and discussion of the competent and ethical use of language. Given that the American trial is a seminal speech event (despite the longstanding distrust of rhetoric) and that everything

Langdell's approach shaped legal education well into the future and limited the role of clinical, writing, and other skills courses that encompassed "practice" components, as well as those within the legal academy who were brave (or naive) enough to bear the risks of teaching them. The ancient schism continues to have profound effects on the shape and substance of modern legal education.¹⁸

The all-encompassing changes that Langdell imposed on legal education obscured until recent times the significant interrelationship between the study of law, the practice of law, and the very forming of law.¹⁹ Where Plato viewed rhetoric as a mere manipulative skill, Langdell's modern law school created a paradigm in which the activities of the practice of law—its essential function of communication—were divorced from the intellectual workings of the law.

Despite the long-lasting nature of the extraordinary power wielded by Langdell over the shape of legal education, during the past twenty years, hairline fractures were uncovered in his paradigm. Pedagogic understanding of the three fallacies by clinical and writing faculty and resultant scholarship,²⁰ recognition by the *MacCrate Report*,²¹ and reminders and pleas from the bench and bar,²² as well as from law students themselves,²³ eventually began to open minds to shifting perspectives and incremental movement

the lawyer does both within and outside of the courtroom is in one form or another communication; and given that the lawyers' communication not only impacts the resolution for the client but impacts the application and very forming of law, the lack of respect, the failure to understand the intellectual and moral depth of courses focused upon legal communication, is mind-boggling.

¹⁸ Feldman, *supra* n. 13, at 475–479; Robbins, *Philosophy v. Rhetoric*, *supra* n. 6, at 122; Winter, *supra* n. 2, at 41.

¹⁹ Ranney, *supra* n. 2, at 2. "If rhetoric has had a long and troubled history—and it has—its relationship with law has been even more troubled. From their early intimate association, where to practice law meant to employ rhetoric, law and rhetoric are now barely on speaking terms." *Id.*

²⁰ See Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 Nev. L.J. 32 (2002); see also Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 Berkeley Women's L.J. 1, 14–16 (2001).

²¹ See ABA Sec. Leg. Educ. & Admis. to the B., *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 138–140 (ABA 1992) [hereinafter *MacCrate Report*]; see also Robert MacCrate, *Preparing Lawyers to Participate in the Legal Profession*, 44 J. Leg. Educ. 89 (1994).

²² See generally *MacCrate Report*, *supra* n. 21; Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992).

²³ See James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 Me. L. Rev. 49, 77 (2006).

forward. Clinical programs made progress toward repairing the schism by equalizing the status of their courses and faculty. Legal writing courses and faculty have now experienced at least two paradigm shifts,²⁴ and are on the cusp of an all important third shift that has the potential not only to unmask the fallacies but also to heal the schism between practice and theory, law and rhetoric.

This Article is an attempt to name and begin to give voice to the possibilities and dimensions of an emerging new paradigm that has both the practical and intellectual weight to burst the Langdellian box and enter the reality of those in the mainstream.²⁵ Its goal is to connect this third paradigm with past paradigms in

²⁴ The first paradigm shift was from the non-existence of writing courses to the product-producing teaching mode. The second paradigm shift is that described by Terry Phelps from the then-current traditional approach to the process model of the new rhetoric. These early classes were no-credit courses taught by librarians, third-year law students, adjuncts, or capped teachers. The shift to the process model was wrought by changed approaches to legal writing pedagogy by legal writing instructors. The changes affected those within the box. This is not to say that the shifts were not influenced by ideas from without, but that the perception of those outside the box was not altered with respect to the split paradigm. The paradigm shift that I suggest might now occur involves a changed perception of the place and significance of legal writing by those outside the box.

As noted in the keynote address given by Richard Gale, Senior Scholar, The Carnegie Foundation for the Advancement of Teaching:

Legal writing faculties are specially situated to advance pedagogy within legal education. They have more regular interaction with students than do many law faculties, and their teaching is more likely to be informed by educational theory and discussion of pedagogy among colleagues. Increasingly, legal writing faculties are publishing about teaching. Yet, this growing body of scholarship has not had a significant impact on pedagogy outside of legal writing and often fails to meet academy standards for promotion and tenure.

The scholarship of teaching and learning offers legal writing faculty new ways of thinking and writing about teaching, with the potential that work in legal writing pedagogy can influence legal education generally and bring greater recognition to those who engage in such work.

Legal Writing on the Move: The Twelfth Biennial Conference of the Legal Writing Institute 2 (Atlanta, Ga., June 7–10, 2006) [hereinafter *Legal Writing on the Move Brochure*] (available at <http://www.lwionline.org/activities/2006conferencebrochure.pdf>).

²⁵ The seeds for this Article were planted during the preparations for a presentation at the Twelfth Biennial Conference of The Legal Writing Institute in Atlanta, Georgia entitled “Legal Writing on the Move.” Through development of the presentation with two writing colleagues, which required exploration and analysis of the interactions of our second and third semesters, student evaluations, past and present literature on the teaching of legal writing, and, most importantly, nearly bi-weekly face-to-face discussions about what it is that we do, how we do it, and the results, hidden dimensions of both teaching and student learning began to reveal themselves, suggesting the possibility that we were on the cusp of a new paradigm. See Tracy Bach et al., Presentation, *Bringing Legal Writing “Out of the Box” and into the Mainstream: A Marriage of Doctrinal Subject Matter & Legal Writing Doctrine* (Atlanta, Ga., June 8, 2006) (copy of presentation notes on file with the Author). The characteristics of this next paradigm for legal writing challenged my awareness, and I spent my summer engaged in their exploration.

the context of recent scholarship about cognitive science, learning theory, and rhetoric in order to highlight the need for deeper integration of practice and theory in the study of law and the significant role that writing curricula fill, or can fill, in that regard.

II. PARADIGM SHIFTS WITHIN THE BOX OF “LEGAL WRITING”

Of all law school subjects, legal writing, despite its marginal status in law schools, has undergone the greatest shifts and taken the most evolutionary steps in the development of its substantive curriculum and pedagogy. The shifts have occurred in a relatively short twenty-year span, mostly under the radar, with the movement from the first to the second paradigm occurring at the ten-year mark. The chronology is significant as we are now at the second ten-year mark poised on the verge of the third paradigm.

The chronology begins when Langdell’s edict that law schools should not teach the practice of law because it would merely teach the “churning out” of a product ensured the absence of writing and so-called skills courses from the law school experience well beyond the first half of the twentieth century. When writing courses were finally added to the law school curriculum, Langdell’s edict defined and confined them.

In 1986 Terry Phelps, a legal writing pioneer and visionary, wrote “The New Legal Rhetoric,”²⁶ in which she introduced the legal writing community to the characteristics of the first paradigm, termed the “current-traditional paradigm.”²⁷ This first paradigm embraced the belief that the teaching of legal writing indeed was merely the teaching of product.²⁸ In the article, Phelps compared this operative paradigm with a new emerging paradigm that would shift focus from product to process.

²⁶ Phelps, *supra* n. 1, at 1089.

²⁷ *Id.* at 1093.

²⁸ *Id.* The method of hiring, the profile of those hired (recent graduates interested in teaching who would use the job as a stepping stone to “real” teaching), the pay scale, the capping of positions (signifying that no teaching experience was necessary to teach these light-weight, product-oriented courses) all created a self-fulfilling prophecy.

Phelps's description of the then current-traditional approach²⁹ illustrates how early legal writing teachers (whose workplace was defined within the pre-fabricated box) accepted and adopted Langdell's paradigm that education in the practice of law (i.e., legal writing) would only focus on the product because it was different from the higher purpose of law schools "to teach a process, a method of inquiry, and a way of thinking, 'like a lawyer.'"³⁰ Given this narrow perception of the teaching of writing as altogether unrelated and inferior to the teaching and study of legal theory, combined with supportive pedagogical beliefs that the composing process cannot be taught anyway, so-called legal writing curricula started out enclosed "within the box," segregated from the study of legal doctrine.³¹

As Phelps pointed out, this early paradigm was rule-based. She suggested that the goal for many of these early teachers was to help students turn out products that were error-free according

²⁹ Phelps describes the then current-traditional model as follows:

Influenced, knowingly or not, by the current-traditional paradigm, teachers assign paper topics, students write the papers outside of class and turn them in, teachers grade and comment on the papers and return them to the students. This procedure is repeated for the duration of the course. Kinds of writing are frequently divided into four modes: exposition, description, narration, and argument. Students are expected to write a given assignment in one or another of these modes. The stress on the modes of discourse results in a stress on the form of the writing. It neglects the role of the reader and the writer, seeing writing as form rather than as conversation.

The writer's role in producing the text remains mysterious, and a tacit assumption of the current-traditional paradigm is vitalism, which stresses the natural powers of the mind and "leads to a repudiation of the possibility of teaching the composing process." The composing process is a creative act not susceptible to conscious control by formal procedures. "[T]he writer is, in a sense, at the mercy of his thoughts. He does not direct them at this or that point; instead, he follows them with more thoughts, spontaneously, naturally. It is hard to say whether he has the thoughts or they have him." The composing process is thus not teachable, and writing teachers have relied on the "frequent writing followed by careful criticism" method. "[T]he teaching of composition proceeds for both students and teachers as a metaphysical or, at best, a wholly intuitive endeavor."

Id. (footnotes omitted). Phelps goes on to cite Maxine Hairston's famous article, *The Winds of Change: Thomas Kuhn and the Revolution in the Teaching of Writing*, 33 *College Composition & Commun.* 76, 78 (1982):

Hairston points out three other misconceptions of the current-traditional paradigm: (1) "writers know what they are going to say before they begin to write"; (2) the writing process is linear, proceeding systematically from prewriting to writing to revising; and (3) teaching editing is really all a writing teacher can do.

Id. at 1093-1094; *see also* Kuhn, *supra* n. 1, at 64 ("[N]ovelty emerges only with difficulty, manifested by resistance, against a background provided by expectation.").

³⁰ Ranney, *supra* n. 2, at 3.

³¹ *Id.*

to the rules. Most of the “writing” rules were rules for revision that focused on such errors as surplus words and passive voice to produce a product characterized by accuracy, brevity, and clarity. As Phelps suggested, these rules were correct but they did not engage students and help them think about the writing process.³² Within this paradigm the teachers of legal writing unwittingly perpetuated the view that the nature of their courses was remedial rather than substantive.³³

In 1987, when Phelps wrote her article about the new paradigm, which she called the “new legal rhetoric,” the shift from product to process was just beginning to be spoken about and practiced. This emerging perspective on legal rhetoric borrowed heavily from classical rhetoric.³⁴ According to Phelps this new paradigm was designed around five principal features:

- (1) Writing is a process; the process is recursive rather than linear; pre-writing, writing, and revision are activities that overlap and intertwine;
- (2) Writing is rhetorically based; audience, purpose, and occasion (the components of the rhetorical situation) figure prominently in the assignment of writing tasks;
- (3) The written product is evaluated by how well it fulfills the writer’s intention and meets the audience’s needs;
- (4) Writing is a disciplined creative activity that can be analyzed and described; writing can be taught; [and]
- (5) The teaching of writing is fruitfully informed by linguistic research into the composing process.³⁵

³² Phelps, *supra* n. 1, at 1098.

³³ *Id.* at 1101; *see also* Dean G. Pruitt & Sung Hee Kim, *Social Conflict: Escalation, Stalemate, and Settlement* 154 (McGraw Hill 2004) (“One mechanism of self-reinforcement involves the *self-fulfilling prophecy*, a phenomenon in which Party’s beliefs and attitudes about Other make Party behave in ways that elicit behavior from Other that reinforces these beliefs.” (Emphasis in original)).

There exist law schools today whose pedagogical understanding continues to be backward-looking. These schools mistakenly equate remedial work done by academic support programs, which help at-risk students develop their abilities so that they can fully benefit from their courses, with legal writing curricula. As long as the term “writing” calls to mind “remedial” rather than “substantive,” law students at these schools will suffer. More forward-looking schools recognize that so-called legal writing courses are aimed at the higher levels of intellectual engagement to which the at-risk student aspires and that they are no more remedial in nature than any of the so-called doctrinal courses.

³⁴ Phelps, *supra* n. 1, at 1094.

³⁵ *Id.*

The academy took up Phelps's call.³⁶ During the years that followed, teachers of legal writing began to re-envision the goals of their courses. The process paradigm described by Phelps was nurtured by the experience and reality of legal writing teachers "within" their classrooms and supported by the *MacCrate Report's*³⁷ "outside" recognition of the faults in the schism between practice and theory in legal education. Additional support for the emerging second paradigm came from growing bodies of research and scholarship, both from within and without the legal writing academy.³⁸ The "outside" support proved critical to the triggering of pockets of mainstream support.

By 1997, the ten-year mark from Phelps's initial publication and dissemination of the second paradigm's forward-looking ideas on writing, the fruits of the movement were visible and, perhaps even more significant, at least one legal writing professional was already looking toward further advancement of the paradigm. An article published in 1997 by a cohort of teachers is illustrative of the secured foundation and broadening acceptance of the second paradigm.³⁹ The stated purpose of the article was to "contribute to the collective knowledge on implementing process views of writing."⁴⁰ In the article the six full-time legal writing teachers in Villanova's first-year writing program described how they "integrated a comprehensive process approach in a traditional writing program."⁴¹ They explained the inspiration for their innovations,⁴² the structure of their traditional product-oriented program, and the techniques they chose to implement the process-oriented program. The year 1997 also marked the publication of the article introducing the seeds of the third paradigm. That was the year Carol Parker began writing about social context theories, and advocating "writing across the curriculum,"⁴³ foreshadowing a continuing

³⁶ See Michael R. Smith, *Rhetoric Theory and Legal Writing: An Annotated Bibliography*, 3 J. ALWD 129, 141–142 (2006).

³⁷ *MacCrate Report*, *supra* n. 21.

³⁸ See Smith, *supra* n. 36.

³⁹ Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. Pitt. L. Rev. 719 (1997).

⁴⁰ *Id.* at 719.

⁴¹ *Id.*

⁴² *Id.* at 723 ("We first decided to incorporate process techniques into Villanova's Legal Writing Program during the 1994–1995 academic year. Our decision was sparked by our introduction to process-oriented techniques at the 1994 Legal Writing Institute Conference in Chicago."). This is an example and recognition of how the writing academy changed the paradigm from within.

⁴³ Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools*

movement forward. Parker's foreshadowing of a third paradigm, while the second secured its hold on legal education, further illustrates the point that writing professionals continue to explore possibilities, to plumb the cognitive depths of writing curricula, and as they do that, to move us inevitably out of the box. Over the next ten years the second paradigm firmly claimed its hold on law schools.

Now at the twenty-year mark since Phelps's publication, ten since Parker's article, process-oriented programs are dominant.⁴⁴ And, significantly, we move steadily forward toward the possibility of a third paradigm.⁴⁵ Emerging research on learning theory and the cognitive sciences is educating all teachers and reframing conceptions of the law school classroom. Momentum for the change comes from the classrooms of writing teachers,⁴⁶ which have proven to be singularly fertile ground for the application of advanced thought about learning.⁴⁷ Additional momentum comes from notice by senior members of the bench and bar⁴⁸ of the unfortunate gap between the current "study of the law" and our expect-

Need It and How to Achieve It, 76 Neb. L. Rev. 561 (1997). Parker suggested,

[T]he 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." Under this approach, law students are viewed as entering a new community of discourse. To produce effective legal writing, students need to . . . write in the discipline—a lot—to really understand how it functions.

Id. at 566–567 (footnotes omitted).

⁴⁴ Observing the ten-year passage of time between Phelps's article about the process-oriented paradigm, the subsequent proliferation of scholarly articles on the topic, the dissemination of the *MacCrate Report*, its acceptance in the mainstream legal community, and finally the adoption of the paradigm by the majority of law schools, the future is promising.

⁴⁵ See Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 Wash. & Lee Race & Ethnic Ancestry L.J. 1 (2005); Karen Gross, *Process Reengineering and Legal Education: An Essay on Daring to Think Differently*, 49 N.Y. L. Sch. L. Rev. 435 (2004).

⁴⁶ See Mary S. Lawrence, *The Legal Writing Institute The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 Leg. Writing 213 (2006) (offering a narrative history of the Legal Writing Institute, which helped professionalize the careers of legal writing teachers).

⁴⁷ See e.g. Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 John Marshall L. Rev. 303 (2000); Susan L. DeJarnatt, *In re MacCrate: Using Consumer Bankruptcy as a Context for Learning in Advanced Legal Writing*, 50 J. Leg. Educ. 50 (2000); Leigh Hunt Greenshaw, "To Say What the Law Is": *Learning the Practice of Legal Rhetoric*, 29 Val. U. L. Rev. 861 (1995); Parker, *supra* n. 43; Michelle S. Simon, *Teaching Writing through Substance: The Integration of Legal Writing with All Deliberate Speed*, 42 DePaul L. Rev. 619 (1992).

⁴⁸ See generally Edwards, *supra* n. 22.

tations that graduating students will be ethical and intellectually competent. Thus, a movement has begun to examine the design of what it is that law schools teach and how they teach it.

The movement includes scholarly examination of current and possible future models of pedagogy and the factors implicated by the gap between theory and practice in legal education. As a result, interest in learning theory is increasingly becoming a main topic at conferences, and law schools are offering workshops in the cognitive sciences and learning theory for their faculties.⁴⁹ This flurry of activity suggests that law school pedagogy is undergoing a paradigm shift generally.⁵⁰ In turn, this attentiveness to the cognitive science of learning and related approaches to teaching is reframing the environment surrounding the significance and status of legal writing curricula.⁵¹ Of special interest here is the growing body of scholarly writing about the meaning-making depths of writing. Such articles set the foundation for examination of the ways that writing curricula can incorporate into the marriage of theory and practice with the goal of deepening the analytic abilities of law students and, thus, practicing lawyers. It follows that such attention to both writing as a meaning-making activity and the related benefits from the marriage of theory and practice will also reframe the perception of who we are, what we do, and how we fit into the classification “law professor” for those who find themselves outside of our box as well as for those of us on the in-

⁴⁹ In August 2007, my institution, Vermont Law School offered a day-long workshop for faculty by G. Christian Jernstedt from the Department of Psychological and Brain Sciences at Dartmouth College. Dr. Jernstedt spoke about *Perspectives on Learning, Teaching, and the Brain* (S. Royalton, Vt., Aug. 16, 2007).

⁵⁰ See generally Schwartz, *supra* n. 2; Rena I. Steinzor & Alan D. Hornstein, *The Unplanned Obsolescence of American Legal Education*, 75 Temp. L. Rev. 447 (2002). In 2006, when the topic of the Twelfth Biennial Conference of the Legal Writing Institute was “Legal Writing on the Move,” presentations heralding glimpses of the third paradigm were evident. See *Legal Writing on the Move Brochure*, *supra* n. 24, at 4–9. That same year the summer conference of the AALS, entitled “New Ideas for Law School Teachers: Teaching Intentionally,” in Vancouver, British Columbia, Canada, echoed many of the same sentiments. See AALS, Program, *Conference on New Ideas for Law School Teachers: Teaching Intentionally*, http://www.aals.org/events_2006newideasprogram.php (June 10–14, 2006). Both conferences focused on learning theory and emerging cognitive science.

⁵¹ See e.g. Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 Leg. Writing 23 (2004); Jennifer Kruse Hanrahan, *Truth in Action: Revitalizing Classical Rhetoric as a Tool for Teaching Oral Advocacy in American Law Schools*, 2003 BYU Educ. & L.J. 299; Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 Clin. L. Rev. 441 (2006); Henry H. Perritt, Jr., *Taking Legal Communications Seriously*, 33 U. Toledo L. Rev. 137 (2001).

side.⁵² It is, thus, incumbent upon us, the designers of writing curricula, to continue to think outside of the box, to explore the ways in which theory and practice could, should, or do meet in our classrooms.

III. THE THIRD PARADIGM: OUTSIDE THE BOX

As current cognitive science and learning theory explain, Langdell's linear view was mistaken. The proliferation of experiential programs at law schools is one indication of the broad acceptance of the need to directly introduce law students to the marriage of theory and practice. A growing understanding of the need to marry theory and practice in the law school classroom in addition to experiential opportunities is beginning to take shape. The third paradigm of legal writing curricula provides a significant vehicle through which law schools can introduce the marriage of theory and practice in the first year of law school. Informing students of the critical role that case synthesis and nuanced analysis play in the real-life problem solving in which lawyers engage is crucial. Since some law schools devote at least two semesters and a minimum of six credit hours to legal writing, curriculum and space in first-year schedules already exist within which to form the pedagogical bridge between theory and practice from the start of the students' legal careers, well before students leave campus for experiential programs. Repairing the schism between writing and doctrine opens the box to limitless institutional, pedagogical, and cognitive possibilities. This is further incentive for law school administrators to rethink old paradigms.

⁵² See Bandler & Grinder, *supra* n. 4, at 5–43, (discussing representational systems and the need to create change within existing systems by altering the representational system); see also Kadoch, *supra* n. 10 (citing *Language, Thought, and Reality: Selected Writings of Benjamin Lee Whorf* 32 (John B. Carroll ed., M.I.T. Press 1956) [hereinafter *Language, Thought, and Reality*]) (describing how language shapes the way humans conceive of and structure reality). Whorf suggests two hypotheses about the relationship between language and thought. The second is that “the structure of the language one habitually uses influences the manner in which one understands his environment. The picture . . . shifts . . . tongue to tongue.” Stuart Chase, *Foreword*, in *Language, Thought, and Reality*, *supra* n. 52, at vi. It may be that to fully change the paradigm of “legal writing” courses we must use different language to name ourselves and what we do. Perhaps “legal writing” must morph into a broader, more accurate term. “Legal writing” might have been an appropriate name in the earliest paradigm of these courses when the debate was over whether legal writing could even be taught. The name began to lose its precision as the paradigm shifted to recognize that writing courses taught not a mere skill but a thinking process. As we move forward to a new paradigm, it might carry not only the taint of its connection to negative aspects of rhetoric, but, unfortunately, a taint created by the term “legal writing” itself.

A. *The Marriage of Doctrinal Subject Matter and Legal Writing Doctrine at Vermont Law School*

The marriage of doctrine and writing derives from a basic premise about law school teaching that is germane to legal writing and doctrinal curricula alike. In all law school courses, the analytic challenge for the student and the pedagogical goal for the professor are the same: the need to find a framework that fosters increasingly more complex thought processes about a given substantive topic. This goal creates a paradox for our students because it requires them to engage in sophisticated, flexible thought about complex issues, but to break that complexity into clear components and to show the interconnections clearly. They must also learn to articulate and communicate those thoughts to an audience with a clarity that illuminates both the forest and the trees and delineates the connections in between. Thus, the learning that takes place in our classrooms is (or should be) as complex as that which occurs in the doctrinal classroom.

The workings of the *Magic Eye*⁵³ is an apt metaphor for explaining that what we do in “writing courses” can and should be as intellectually challenging as what is done in “doctrinal” courses. For those readers unfamiliar with the *Magic Eye* books, they contain a series of pictures with hidden dimensions. The readily visible pictures include graphic designs and traditional photographic depictions. A diverging of the eyes, a letting go of automatic seeing, is necessary for the viewer to see the hidden image. Sometimes, the process of diverging the eyes can be easy, and at other times nearly impossible to achieve. Critical to the ability is a threshold knowledge that there is a deeper image.

The metaphor of the *Magic Eye* makes tangible the recursive nature of the critical thinking we expect our students to achieve. The required intellectual movement between the simple and the complex thought processes can be experienced before it is fully achieved by likening it to the process of refocusing the eyes to see the three-dimensional picture behind the flat picture on the pages of the *Magic Eye*. The student is like the person who is unfamiliar with the context of the *Magic Eye* book; who, without instruction and guidance, is able to see only the flat representation. Once introduced to the existence of a deeper vision, the student attempts to understand the process necessary to see the deeper depiction.

⁵³ *Magic Eye: A New Way of Looking at the World* (N.E. Thing Enters. 1993).

This endeavor is at once both simple and complex. Like the person viewing the *Magic Eye* image, for the law students too, the simple and complex can fade back and forth into perception; one moment a glimpse of the deeper vision is possible; the next it disappears. Sometimes the person can intentionally bring the focus back, but at other times only the simple is visible. For the law student, as well as for the viewer of the *Magic Eye*, the goal is the attainment of the ability to move back and forth between the two intentionally: to see the broader and the narrower perspectives, and to understand the psychological and intellectual impediments to clear vision. For the law student, that broader perspective includes understanding of and respect for the significance of multiple perceptions both intellectually and morally.

The *Magic Eye* metaphor illuminates the fallacy of Langdell's schism because mastery of the process described above is critical to both the intellectual pursuit of legal theory and the intellectual pursuit of legal practice. This ability to engage in the recursive nature of critical thinking is key to success as a law student, as a practitioner of law, and as a member of the legal community whose choices and communications help form and reform the law.⁵⁴ It is particularly true for those of us who are their educators. Thus we need to explore and underscore the cognitive depths of the third paradigm of writing pedagogy, and the ways in which we guide our students through a selected doctrinal eye to experience the three-dimensional aspects of both legal writing and the substantive law about which they write. The doctrine-writing marriage model provides a fertile environment for engaging students in thinking critically about substantive legal topics in a cohesive and comprehensive manner. This model engages them in sophisticated, flexible intellectual thought about complex issues. The writing aspect requires students to develop sufficient understanding of the complex so that they can communicate the resolution clearly. It requires that they learn to communicate to an audience with a clarity that illuminates both the forest and the trees and delineates the connections in between. In this paradigm, writing becomes the vehicle through which students explore the doctrine; doctrine frames and determines the audience, purpose, and format of both written and oral communication.

⁵⁴ We can neither "simply" educate our students in the law nor "simply" educate them in the practice of law, because how they learn, what they learn, and who they become will form and reform the law as they use what we have taught them. Law schools must view what we are about through the "magic eye."

We currently do this at Vermont Law School in the second and third semesters of a three-semester writing program. The first-semester course, Legal Writing I, introduces students to electronic and hard copy research, and to beginning the analysis of what they have found. This two-credit course moves from discrete exercises to closed-, and then open-, universe predictive memos. It is taught by third-year law students called Dean's Fellows. The course is graded Pass/Fail. The design and pedagogy of this course fit a traditional model. While the assignments in the next two semesters fit the traditional model, the substantive content and pedagogical designs illustrate a third-paradigm approach that marries theory and practice. Legal Writing II begins with a final predictive memo project before moving on to persuasive writing. Each section of this three-credit course is set in a distinct area of the law, which permits students to choose an area of doctrinal interest and learn about substance while honing their research, analysis, and writing skills. Our third course in the sequence, Appellate Advocacy, utilizes the complex legal issues presented by pending United States Supreme Court cases. This three-credit course is another example of a mixed-focus course aimed at developing critical thinking utilizing a theory-practice marriage model.⁵⁵

Three course descriptions detailing different and exciting ways of combining theory and practice help to illustrate the enhanced learning and educational possibilities available to our students. First is the description of my Legal Writing II course, *Alternative Dispute Resolution. Using Critical Thinking and Mindfulness to Learn Related Aspects of Process in LRW and Alternative Dispute Resolution in Real World Situations*:

The marriage of writing and alternative dispute resolution creates a fertile environment for students to experience the significance of process in client representation, dispute resolution, and legal communication. The course is first and foremost a course that introduces the critical need for clarity, accuracy, relevance, and depth along with other characteristics of critical thinking in

⁵⁵ Five factors set the stage for innovation in our program: First, the faculty undertook a curriculum review. Second, there was a desire to offer students a doctrinal elective by the second semester of their first year. Third, Tracy Bach, one of the writing professors, surveyed best national practices and reported to the curriculum committee. Fourth, Vermont Law School had eliminated caps, and all writing professors were now on long-term contracts after going through a second national search and a thorough tenure-like vetting process. Finally, we were all experienced teachers and had developed doctrinal specialties and areas of scholarship.

both written and oral communication. At the same time that students learn the importance of critical reading and critical writing in the practice of law, the course introduces students to the law governing various methods of ADR; to the examination of the relationship between the courts and methods of ADR in the forming of law; [and] to the critical role of the lawyer as it pertains to the strategy of the selection of the vehicle for resolution. Students are expected to critique not only their work product but [also] the process through which the product evolves. The students work with two case files. The first introduces the strategic differences between ADR methodologies and litigation within the context of an easement dispute between neighbors. Students write research memos [and] client letters, and then use their written products to engage in negotiation. Students then respond to the lawyer's Motion for Summary Judgment. They take a field trip to the property to get the real-world perception of the problem. The second case expands on the use of ADR methodologies to resolve disputes and then introduces the role of the courts in the enforcement of arbitration clauses within a Divorce Settlement Agreement. This is an issue of first impression [that] requires sophisticated case synthesis and policy analysis. Students write an appellate brief and give oral argument.⁵⁶

Second is Professor Anthony Renzo's description of his Legal Writing II course, Civil Rights Law. *Using Legal Process Immersion to Teach Students the Indivisibility of Legal Analysis and Legal Writing*:

It is not enough to intellectually grasp the concept that legal writing and legal analysis are inextricably linked. Students must discover and experience for themselves that legal writing is an indispensable and creative component of understanding and analyzing legal doctrine. While legal writing ultimately serves to communicate the clarity of legal analysis and comprehension, the writing process itself adds a holistic logic and [a] depth to the analysis that could not otherwise be achieved. In short, writing is a mode of thinking that both communicates and generates knowledge.

To implement this "writing as process" methodology, I have developed a course that uses case simulations constructed around a particular doctrinal area; in this case, civil rights law. By having the student work through the various stages of spe-

⁵⁶ A copy of this course description is on file with the Author.

cific legal disputes involving civil rights law, the student is required to write about those disputes and the law governing them from various perspectives; e.g., client correspondence, internal office memos, pleadings, trial motion briefs, and judicial opinions. By immersing students in a multi-stage legal writing process that cannot be managed without an in-depth understanding of legal doctrine, students come to understand legal writing as indispensable to the analysis itself. This, of course, requires the teacher to engage in a critical dialogue with each student that shows the student how the process of writing and rewriting is necessary both to construct and to communicate clear and logical ideas about what the law is and how it should be applied. With this approach, students learn that legal analysis is more than the search for a single, correct interpretation of legal rules and principles. Instead, the student is faced with a multifaceted process of thinking and writing about the legal dispute at different times for different purposes. Legal process immersion forces students to find new connections and to refine their analysis as they tackle the various demands that must be met in order to competently represent the client or to resolve the dispute as a neutral decision-maker.⁵⁷

Finally, I include Professor Tracy Bach's description of her Legal Writing II course, Environmental Health Law. *Using Problem-Based Service Learning (PBSL) to Hone LRW Skills While Solving Real World Problems:*

Problem-based service learning (PBSL) makes an explicit connection between law school and legal practice while requiring students to fuse substantive knowledge and legal skills to solve a client's problem. This teaching method takes a piece (or more) of a planned curriculum and teaches it through a service project. A PBSL project is structured by the professor to meet both curricular goals and the needs of a non-profit organization. Thus at the same time students learn the content and skills at the heart of a given course, they also learn the subject's impact on the world outside the classroom, especially as it serves those most in need of assistance. PBSL has been well-integrated into high school and college curricula. It is now making its way slowly into professional education, notably in medicine and business. This teaching strategy has a natural hook in the law school curriculum, given our problem-based approach to learning. To date, the legal clinic has been the locus for learning in the service of others. Yet law school classrooms could bring real-

⁵⁷ A copy of this course description is on file with the Author.

life legal problem solving into the curriculum, most easily in classes like Legal Research and Writing (LRW). Two years ago, as I planned a new 1L writing course set in environmental health law, it occurred to me that my work with a local non-profit public health advocacy group dovetailed well with my developing curriculum. Rather than develop a simulation based on my real-life experience with this group, why not hand part of this project over to my first-year students, under my supervision? In so doing, students can achieve some balance in the content-rich but service-poor law school curriculum by placing more of their learning in the context of service to others. Doing so meets a basic human need to connect ideas with their impact on others. It also enables lawyers in training to experience the satisfaction derived from pro bono work.⁵⁸

B. Observations: Marriage of Doctrine and Writing

Over the years as I have endeavored to inspire my students to be expert learners, I have learned to be a better teacher from the exercise of self-awareness of my teaching. However, the enhanced learning that I have witnessed in my Legal Writing II: Alternative Dispute Resolution course, at least initially, was as much a product of serendipity as it was of any new approach to teaching. In the beginning I thought I was using the same pedagogy as I had before, a combination of the process and social-contextual approaches to composition theory. It was in retrospect that I realized that unnamed dynamics were at work that enhanced the learning of both alternative dispute resolution and legal analysis and writing topics. I discovered that for the doctrinal combination of alternative dispute resolution and writing, the enhancement derived from a substantive focus and critical engagement with process. Alternative Dispute Resolution is all about the significance of choice of process. Thus, the focus on process, combined with communication and substance, forced my students to experience three aspects of writing. And because the process of writing was the vehicle for learning both the law and the practical aspects of alternative dispute resolution, the learning was enhanced.

The kind of enhanced learning a student experiences often varies with the relationship between the doctrinal topic and writing. While the ability provided by ADR opened a unique perspec-

⁵⁸ A copy of this course description is on file with the Author.

tive on the complexities of process to trigger enhanced learning for my students, one of my colleagues whose doctrinal topic is Environmental Health Law is able to use related service-based writing to engage her students. Because the writing faculty has been able to draw upon their areas of doctrinal expertise to design their courses, they are able to identify a unique window through which to engage students in the particular doctrinal topic, which connects to the teaching of effective communication about that topic. Thus interactions between various subjects and writing projects open the door to unlimited curriculum design opportunities and new ways of incorporating doctrine and skills.

A presentation by Steven Schwinn,⁵⁹ entitled *Theory and Models of Actual Legal Work in the First Year*, illustrates yet another way to move toward a third paradigm. Schwinn described a six-credit course that he designed and implemented for first-year students in civil procedure that integrated writing and other skills. He discussed how the design of his course tapped into the moral as well as the cognitive development of his students. The written work allowed the students to see themselves as active agents in the development of law. Schwinn suggested that traditional doctrinal courses, like the traditional writing course (in the first paradigm), are rooted in a developmental pedagogy that is not applicable to the learning needs of most law students. He suggested further that an experience-based approach—marrying legal doctrine and writing—better addresses the needs of students.

Schwinn explained and applied the learning models of Lawrence Kohlberg, William Perry, Joseph Williams, and Jack Mazirow to illustrate how traditional course design and pedagogy failed to meet the needs of his students. He focused primarily on three of Perry's stages of moral and cognitive development:⁶⁰ dual-

⁵⁹ Steven D. Schwinn, Presentation, *Theory and Models of Actual Legal Work in the First Year* (Vancouver, B.C., June 12, 2006) (copy of presentation notes on file with the Author). Schwinn's ideas are relevant to this Article through two related connectors. The first and most significant is the effect of his presentation on my thoughts. The second relates to the third paradigm. Schwinn prefaced his talk by discussing his movement from legal writing teacher to doctrinal teacher. His move had nothing to do with any dislike of teaching legal writing. In fact, as his talk explained, he continues to teach writing but in a different framework that, at the time, would not have been possible at his law school if he were "merely" a legal writing teacher. He also suggested that he believed his students took him more seriously as a doctrinal professor because of the stigma attached to the teaching of legal writing.

⁶⁰ These stages are discussed in William G. Perry, Jr., *Forms of Ethical and Intellectual Development in the College Years: A Scheme* (Holt, Rinehart & Winston 1970).

ism,⁶¹ relativism,⁶² and reflective thinking,⁶³ which he found resonated most accurately with his observations. Schwinn explained that he had observed that students were not necessarily coming to law school as dualistic thinkers, but rather that the traditional curriculum was turning them into dualistic thinkers, creating the idea that there were definite right and wrong answers. He also found that many students felt alienated from law school. They were not quite getting it. Because they were not engaged in real legal work, they “checked moral commitments at the door.” They were unable to connect what had brought them to law school with what they were learning in law school.

Schwinn believed that many writing courses were complicit in putting students into the dualistic stage. He suggested that the hypothetical simulations resulted in students taking a scavenger-hunt approach to research, looking for specific answers and that this approach had the effect of causing students to work backwards into the thought process of the activity. He suggested that such traditional approaches were homogenizing students. He wanted to engage his students on multiple planes of thought and to help them advance to Perry’s reflective stage. Schwinn’s ideas suggest that the “hidden dimensions”⁶⁴ of learning are connected to the re-engagement of students in both cognitive and moral development, and they are revealed when a course is designed around both doctrine and the reflective and meaning-making process of writing, particularly when placed in real-world experiences.

Study within the cognitive sciences and learning theory has brought mainstream attention to the significant place of legal writing in the law school curriculum. “There is a virtual revolution going on within the cognitive sciences.”⁶⁵ Growing bodies of accepted knowledge about the workings of the mind make clear that the brain does not operate according to the schism, created by Lang-

⁶¹ Schwinn described the student in Perry’s dualistic stage as seeing in black and white, as not interested in nuanced arguments, and as believing that the professor has the right answer and wants it. Schwinn, *supra* n. 59.

⁶² Schwinn described the student in Perry’s relativism stage as able to understand the contextual nature of knowledge. In every aspect of law “it depends” on the context. *Id.*

⁶³ Schwinn described the student in Perry’s reflective stage as able to recognize the complexity of relativism yet is still able to come to his or her own moral position. *Id.*

⁶⁴ See generally Edward T. Hall, *The Hidden Dimension* (Doubleday 1966). I borrow the term from Hall. Hall was the first to refer to spatial implications as the “hidden dimensions” in man’s interactions. In this Article, I suggest that the integrated classroom creates an environment and interaction that tap into “hidden dimensions” of learning.

⁶⁵ Winter, *supra* n. 2, at xi.

dell, between practice and theory.⁶⁶ Recognition of the relationship between experience, memory, emotion, and learning is significant for those designing law school curricula.

The more we learn about the cognitive sciences, the more we understand that teaching is so much more than imparting knowledge. Teaching involves showing our students how to absorb and integrate new knowledge and how to apply that knowledge with critical thought.⁶⁷ One could say that the marriage creates a double-layered, “magic eye” experience.

In order to fully integrate knowledge of learning theory and cognitive development into course design and pedagogy that will succeed, teachers must understand the goals we need to set for our students. Michael Hunter Schwartz recently published a timely book entitled *Expert Learning for Law Students*.⁶⁸ Citing two leading authors⁶⁹ in expert learning, Schwartz provides a concise description of expert learners. They

are aware of the knowledge and skills they possess, or are lacking, and use appropriate strategies to actively implement or acquire them. This type of learner is self-directed and goal oriented, purposefully seeking out needed information, incorporating and applying a variety of strategic behaviors to optimize academic performance. . . . By using the knowledge they have gained of themselves as learners, of task requirements, and of specific strategy use, they can deliberately select, control, and monitor strategies to achieve desired goals and objectives. By being consciously aware of themselves as problem solvers and by monitoring and controlling their thought processes, these

⁶⁶ Michael Hunter Schwartz, *Expert Learning for Law Students* 21–51 (Carolina Academic Press 2005).

⁶⁷ I also have experienced these hidden dimensions in my Appellate Advocacy course, in which students learn the law related to a case currently pending before the United States Supreme Court, write appellate briefs, and present oral argument. Many students also take the opportunity to attend the actual arguments of the case at the Court. Our semester culminates in a panel discussion in which each of the professors who teach the course (each selecting a different case) invites an attorney who worked on the case and preferably argued or will argue the case before the Court. Students get to hear from the actual attorneys and to discuss the case, their briefs, as well as unknown background material. It is an engaging real-world experience for students, and most agree that it is their capstone law school experience.

⁶⁸ Schwartz, *supra* n. 66.

⁶⁹ Peggy A. Ertmer & Timothy J. Newby, *The Expert Learner: Strategic, Self-Regulated and Reflective*, 24 *Instructional Sci.* 1 (1996).

learners are able to perform at a more expert level, regardless of the amount of specific domain knowledge possessed.⁷⁰

IV. CONCLUSION

Ironically, noble things resulted from legal writing being segregated from the rest of the law school curriculum. Stuck within the box, we became expert teachers and, from our teaching, we became expert learners. We applied our learning about composition theory to spark the revolution from the product paradigm to the process paradigm, and we have constructed the foundations of the third paradigm. We were able to accomplish so much, perhaps, because we were sidelined and only viewed occasionally from the corner of the administration's eye. It is time, however, to step forward into the mainstream. As Terry Phelps has said, we have spent long enough as Ginger Rogers, executing the same steps as Fred Astaire but doing it backwards in high heels. It is time we take authority and assume our rightful place in law schools. The law is language. We teach our students how to use the language of the law that is at the heart of the practice and forming—and reforming—of law.

⁷⁰ Schwartz, *supra* n. 66, at 4 (citing Ertmer & Newby, *supra* n. 69, at 5–6).