

WRITING ACROSS THE CURRICULUM: PROFESSIONAL COMMUNICATION AND THE WRITING THAT SUPPORTS IT

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I. INTRODUCTION

As professionals-in-training, law students must become fluent in the written forms by which legal practitioners communicate information and professional analysis to and on behalf of their clients—in various documents such as client letters, law office memoranda, and briefs to a court. Generated in the context of representing clients, formal law-practice-based writing should reflect an accurate understanding of a client's concerns, goals, and expectations.

If we agree that formal legal writing is organic to the attorney-client relationship, then helping students form a writing identity that is attentive to all dimensions of that professional relationship seems critical to a law school's professionalizing mission. The goal of building a client-centered writing identity, then, would be to produce writing that is rigorously precise and accurate, as well as clear, engaged, evocative, and humane. To that end, legal educators need strategies that speak to the multiple contexts in which lawyers engage in client-centered professional writing. At the 2008 Annual Meeting of the Association of American Law Schools, the program for the Section on Legal Writing, Reasoning, and Research considered in depth one such strategy: the set of theories and practices known as Writing across the Curriculum (WAC), an educational initiative that originated in Britain at the secondary school level in the 1960s, and was adapted to

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undergraduate higher education in the United States in the 1970s.¹

II. WAC AND LEGAL EDUCATION

Associated principally with a movement to increase low- and higher-stakes writing opportunities throughout the college curriculum,² writing pedagogy in American law schools typically has not been conceptualized and framed in terms of the ideas, practices, vocabulary, and values identified with WAC, with one exception. Legal educators have embraced the relevance of teaching professional writing (hence, law schools' acknowledged function of helping students "learn to write" in the discipline—i.e., like a lawyer).³ There has, however, been less institutional or scholarly assessment of how research about WAC's other theoretical focus, "writing to learn" (writing as a mode of learning),⁴ might apply to law school curricula to complement the disciplinary focus of law school writing. It is also unusual for law schools to differentiate writing according to the "transactional," "expressive," and "poetic"

1. David R. Russell, *American Origins of the Writing-across-the-Curriculum Movement*, in *Landmark Essays on Writing across the Curriculum* 3, 14–15 (Charles Bazerman & David R. Russell eds., Hermagoras Press 1994).

2. *Id.* at 15.

3. For recent treatments of this approach in law review literature, see Pamela Ly-saght and Cristina D. Lockwood, *Writing-across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ALWD 73, 75–76 (2004), and Susan E. Thrower, *Teaching Legal Writing through Subject-Matter Specialties: A Reconceptation of Writing across the Curriculum*, 13 Leg. Writing 3, 22, 24 (2007).

4. For the classic exposition of this idea in Writing-Across-the-Curriculum (WAC) literature, see Janet Emig, *Writing as a Mode of Learning*, in *Landmark Essays on Writing across the Curriculum* 89, 91 (Charles Bazerman & David R. Russell eds., Hermagoras Press 1994). For a thoughtful application of this concept to law school pedagogy, see Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 Leg. Writing 1, 20–24 (2000) (identifying a range of writing activities that can promote learning such as case briefing, responding to questions, outlining, and lawyering assignments). Although legal writing scholars have noted connections between writing and cognition, see e.g., Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader (and Writer), Text and Context*, 49 J. Leg. Educ. 155, 159–160 n. 35 (1999) (applying insights from New Rhetoric); Philip C. Kissam, *Thinking (By Writing) about Legal Writing*, 40 Vand. L. Rev. 135, 136–137 n. 5, 138–141 (1987) (distinguishing critical from purely instrumental writing), the American Bar Association, the principal institutional gatekeeper of the writing curriculum in United States law schools, does not refer to the conceptual framework and vocabulary of "writing to learn," or to WAC's differentiation of writing according to function, see footnote 4 *infra*, in its curricular standards. See ABA Standard 302(a)(3); Interpretation 302-1.

functions that WAC scholarship has identified,⁵ much less to afford students regular opportunities to write within each of these categories.

Rather, American law schools have adopted a gradualist approach: to date, only a few have approved a WAC requirement⁶ or participate in a cross-university initiative implementing Writing across the Curriculum/Writing in the Disciplines (WAC/WID).⁷ There is a growing and valuable body of scholarship embracing writing across the law school curriculum,⁸ but this work has focused mainly on a single, albeit vitally important aspect of WAC pedagogy. It supports increasing the amount of *transactional* writing in law school, which, in the lexicon of WAC, is writing within professional genres that results in instrumental and typically audience-directed documents.⁹ This writing, commentators argue, should occur more regularly in doctrinal courses to deepen students' subject-matter knowledge and analytic skill, and improve their proficiency in professional writing conventions.¹⁰

5. The delineation of writing functions as transactional (generally, truth-based expository writing), poetic (non-instrumental writing that invites an appreciation of form), and expressive (writing that expresses the “ebb and flow” of the writer’s ideas and emotions) originated in the work of James Britton and associates in a report for Britain’s Schools Council project. Russell, *supra* n. 1, at 14–15. For an elaboration of these functions see Nancy Martin et al., *The Development of Writing Abilities*, in *Landmark Essays on Writing Across the Curriculum* 33, 39, 40–42 (Charles Bazerman & David R. Russell eds., Herma-goras Press 1994).

6. For example, Southern Illinois University School of Law in 2004 and Detroit Mercy School of Law in 1998.

7. For example, City University of New York School of Law, implemented such an approach in 1999.

8. Examining the benefits of an approach that is informed by compositional theories concerned with the writing process and the context in which legal writing occurs in legal education, Carol McCrehan Parker, commentator for the AALS panel papers included in this volume, has given the subject sustained treatment. Carol McCrehan Parker, *Writing Is Everybody’s Business: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum*, 12 Leg. Writing 175 (2006); Carol M. Parker, *A Liberal Education in Law: Engaging the Legal Imagination through Research and Writing Beyond the Curriculum*, 1 J. ALWD 130 (2002); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997) [hereinafter *Writing Throughout the Curriculum*].

9. See *supra* n. 5. This use of “transactional writing” is distinguishable from the more specific understanding of the term in law practice and legal education, in which typically the writing is associated with contract drafting.

10. E.g. Elizabeth Fajans, *Learning from Experience: Adding a Practicum to a Doctrinal Course*, 12 Leg. Writing 215 (2006); Eric Goldman, *Integrating Contract Drafting Skills and Doctrine*, 12 Leg. Writing 209 (2006); Pamela Lysaght, *Writing across the Law School Curriculum in Practice: Considerations for Casebook Faculty*, 12 Leg. Writing 191

Others advocate importing doctrinal teaching into legal writing classes for this same purpose—to enhance students’ learning to write in the discipline.¹¹ In addition to learning directly about professional genres, however, novice writers benefit from opportunities to rework ideas and language that they encounter in formal contexts by turning to other, non-transactional WAC-identified writing. This non-formal writing includes the *expressive* mode (reflective and introspective writing that reflects the “ebb and flow” of the writer’s ideas and emotions), and *poetic* and other creative, literary modes that are attentive to the formal aspects of writing.¹² Although most scholarship on WAC within the law school curriculum has focused on transactional writing, some authors have also examined how introspective and creative writing also serves legal education’s professionalizing work. This scholarship has examined, for example, how such writing can promote self-awareness and help students develop a professional identity.¹³ Thus far, however, scholarship on expressive and poetic writing has not emphasized how non-formal writing can itself help develop law students’ skills in using the forms and genres of professional writing.

(2006); Lysaght & Lockwood, *supra* n. 3. Several other scholars of legal writing and pedagogy have discussed WAC methods in articles addressing broader questions of law school pedagogy. 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, 312–314 (2000) (arguing for more writing in more courses but noting that most law schools had not acted on WAC pedagogy proposals given the faculty’s lack of familiarity with WAC concepts and possible resistance to them); Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 *Ohio St. L.J.* 1965, 1967–1968, 2006–2014 (1999) (advocating creation of writing opportunities in doctrinal courses in addition to the law school examination essay to enhance professional knowledge and analytical competency); Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (And Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 *Leg. Writing* 295 (2005) (arguing for incorporation of writing in doctrinal and clinical courses); see also Kissam, *supra* n. 4, at 137 n. 5, 152 (linking critical writing process with learning).

11. E.g. Thrower, *supra* n. 3, at 14 n. 31, 22, 24.

12. See *supra* n. 5.

13. E.g. James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 *Willamette L. Rev.* 45, 56–58 (1993) (explaining how incorporating a journal-writing component in a course on the role of the lawyer brought to the surface students’ struggles with legal writing and a perceived loss of personal voice); Parker, *Writing throughout the Curriculum*, *supra* n. 8, at 597–600 (concluding that using reflective writing encourages exploration of values, personal responses to the law, and “finding one’s own voice”).

Fortunately, educators in other disciplines have relevant experience to offer on the broader use of non-transactional writing in professional education. Drawing in part on these insights, the contributors to this panel illuminate for us the role that reflective, narrative, and other imaginative writing can play both in forming a professional self-concept *and* in strengthening and enlivening writing in professional genres. Collectively, the essays demonstrate how a broad spectrum of writing modes can function in professional education, and they support the case for increasing the amount of non-transactional writing in doctrinal and clinical law school courses.

III. NON-TRANSACTIONAL WRITING IN LAW SCHOOL

Scholars of professional education conclude that adult learners tend to learn more and more deeply when their assignments require them to produce non-transactional, critically reflective writing. Literature on adult learning theory recognizes that student experience with non-transactional expressive writing can promote the goals of adult-centered learning, particularly critical examination of long-held assumptions.¹⁴ This literature appreciates that course work in which students keep writing or reading journals¹⁵ can serve as a means of learning through reflective practice. Expressive writing of this sort offers psychological space allowing writers to cast off habitual ways of thinking and reorienting themselves through “reflective withdrawal and reentry.”¹⁶ One scholar in particular, Janet Emig, focused her research on exploring the connection between writing and learning and has developed some hypotheses for why a self-reflective process achieved through writing has particular benefits for the developing professional.

14. Stephen Brookfield, *Using Critical Incidents to Explore Assumptions*, in Jack Mezirow et al., *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning* 179–182 (Jossey-Bass 1990).

15. See e.g. Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 Cornell L. Rev. 163, 202–204 (1993) (describing use of reading journals in which law students record their questions and critical responses to judicial opinions that they have read, instead of paraphrasing the opinions).

16. Joseph Lukinsky, *Reflective Withdrawal Through Journal Writing*, in Jack Mezirow et al., *supra* n. 14, at 213.

Drawing on the work of cognitive psychologists Jerome Bruner and Lev Vygotsky, among others, Emig concluded that higher-order cognitive functions seem to develop most fully through reading, writing, listening, and speaking, particularly writing, because it expands our thinking and makes it concrete by memorializing it in visible product. Writing also is particularly effective at developing higher order cognitive processes because people tend to write more slowly than they speak, and because written speech expands one's "inner speech" and expresses connections among ideas more clearly.¹⁷ Emig further argued that writing is "epigenetic," that is, it makes visible an ongoing record of developing thought.¹⁸ In this way, writing can help to make what we think about a topic more intelligible to ourselves.¹⁹

If we accept Emig's premises and conclusions, then a turn to expressive writing should help law students write their way through a difficult legal question. Writing that is free of the formal structures of CRRACC or IRAC and is based on a self-reflective process can help students to develop and continually revise their thoughts as they work through an analysis.²⁰ The opportunity afforded to lay claim to an insight by writing reflectively about it demonstrates "writing to learn" in operation. Incorporating such reflective writing in a range of law courses—doctrinal, clinical, and simulation-based—offers the potential for supporting deeper learning as well as metacognition,²¹ that is self-awareness about skills development²²—and which learning theorists consider to be a hallmark of professional growth and identity.

Narrative writing—and the narrative reasoning that such writing can illuminate—is equally critical to effective professional communication. As Anthony Amsterdam and Jerome Bruner

17. Emig, *supra* note 4, at 91, 93–94. And in inscribing experience into the graphic symbolic system of verbal language, it deals with what Jerome Bruner has named as three principal ways of dealing with the world: doing (hand), depicting (eye), and restating in words (brain). *Id.* at 92.

18. *Id.* at 95–96.

19. See Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 Leg. Writing 1, 19–20 (1991).

20. See Lukinsky, *supra* n. 16, at 230–232 (summarizing cognitive uses of journaling).

21. Williams, *supra* n. 19, at 30.

22. J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 Clin. L. Rev. 55, 71, 80–81 (1996).

demonstrate in their magisterial *Minding the Law*,²³ narrative is an important way of drawing meaning from experience, a form of knowing and reasoning²⁴ that is distinct from the logical capacity that legal education particularly emphasizes.²⁵ Positing that “narrative imagination” is crucial for the education of citizens,²⁶ humanities scholar and legal philosopher Martha Nussbaum has argued that the study of narrative is essential in legal education: “the imagination of human predicaments is like a muscle: it atrophies unless it is constantly used. And the imagination of human distress and desire is an important part of the lawyer’s equipment.”²⁷

Reading and writing texts through a narrative lens makes it possible to think about law beyond the purely cognitive domain—to understand it both more particularly, in a textured, contextual way, and holistically. Narratives draw on larger values that animate law,²⁸ such as questions of responsibility, equity, and policy that might otherwise go unasked and unnoticed. For example, a writing assignment that asks students to reconstruct a judicial opinion narratively makes it possible to ask, and answer, significant questions that may not surface under traditional rule-based analysis: How are human agency, motivation, and character addressed in the opinion? Whose voices or perspectives are present and whose are absent or silent?

Narrative writing, and the broader category of imaginative or literary writing within which it falls, is important to the development of the legal writer because it encourages exploration of the creative dimensions of a lawyer’s work. Giving law students permission to work in literary genres—writing short stories, essays, and poetry—may seem far removed from the professional writing contexts that lawyers must learn. But, like the benefits of writing reflectively, writing in a literary mode (“poetic” writing in the

23. Anthony G. Amsterdam & Jerome Bruner, *Minding the Law* (Harvard 2000).

24. *Id.* at 116–117.

25. *Id.* at 127, 134–135, 141. Some theorists argue that narrative is innate, that we are hardwired to experience the world in terms of narratives; others ground our resort to narrative on cultural factors—the narratives we tell are the value-bearing narratives of our culture’s historic experience—of loss, redemption, triumph—and that we use these narratives to make sense of our own daily experience. *Id.* at 115–117.

26. Martha Nussbaum, *Reply to Amnon Reichman*, 56 *J. Leg. Educ.* 320, 322 (2006).

27. *Id.* at 324.

28. Amsterdam & Bruner, *supra* n. 23, at 135–136, 140.

WAC lexicon) allows a writer to step back from habitual, formal ways of thinking and engage in an intuitive form of thinking that “can help surface deeper, stronger, more authentic arguments.”²⁹ Writing in this mode can take a number of forms. Most obviously, it will use literary forms to address legal content. Mark Weisberg of the Queen’s University law faculty in Ontario has described how he uses the essay form in his Legal Imagination course for this purpose. Pointing to essays that his students have written about their engagements with law in a broader social context, Weisberg identifies why the essays are persuasive and poignant: they are “specific, focused, [and] personal” stories written in “distinctive, strong voices.”³⁰

Tapping into creativity to understand law can also work in the other direction: rather than relinquishing the formal structures of professional legal writing, we can adapt those same structures to non-legal contexts. To point to just one example, a now-graduated student from CUNY School of Law, where I teach, used the form of a judicial opinion to illuminate a narrative about a relationship—a writing partnership—that had become irretrievably broken.³¹ Here, the student’s ability to concentrate on approximating judicial discourse—with its authoritative voice, its modeling of a reasoning process, and its acknowledgment of the ways in which rules and procedures constrain judicial decision making—was aided by the fact that the writer had detached legal form from content.³²

Encouraging legal writers to experiment with non-traditional, literary approaches to writing of either sort can help these writers gain a surer sense of their own voice and instill confidence in their ability to engage with legal form and content.³³ And, I would suggest, writing in a legal genre such as a judicial opinion or a law office memorandum without bearing the additional “cog-

29. Mark Weisberg, *Epilogue: When (Law) Students Write*, 27 *Leg. Stud. Forum* 421, 429–431 (2003).

30. *Id.* at 423.

31. The student writer produced this opinion as part of an extracurricular writing workshop that the School of Law’s Writing Center organized, but a writing exercise of this sort would also be appropriate in a “workshop-style” classroom context.

32. The opinion is posted on the law school’s writing website under a section that features a wide range of student writing, at www.law.cuny.edu/academics/WritingCenter/forum/creative-writing-group/conti-cook.html.

33. Weisberg, *supra* n. 29, at 424, 431–432.

nitive burden” of writing about legal doctrine can have pedagogic value for novice legal writers because. This type of writing focuses effort on developing proficiency in the forms of law—a skill that can seem so daunting to writers who are still becoming socialized into legal language.³⁴ Affording space for imaginative writing in law school also hammers home an often overlooked point: the day-to-day work of professional legal education—reading cases, drafting Moot Court briefs, communicating with clients in the law clinic—requires a well-developed capacity to imagine another’s perspective and alternate ways of thinking about legal problems.

An openness to working in creative and literary modes would bring legal education more closely in line with the turn to the humanities in the training of physicians. An increasing number of medical clinicians assign reading and writing in the humanities to guide their mentees toward a more reflective, empathetic approach to professional practice. The Narrative Medicine Program at Columbia Presbyterian College of Physicians and Surgeons offers a case in point. The program seeks to cultivate “narrative competence” among physicians, nurses, social workers, and therapists by “developing the capacity for attention, reflection, representation, and affiliation with patients and colleagues.”³⁵ Program director Dr. Rita Charon has written extensively on narrative medicine and has designed curricular modules to develop narrative competence. Currently she offers a fourth-year narrative medicine “immersion” course in close reading and narrative writing that has generated evidence of improvement among students in “attentive and effective patient care.”³⁶ Panel participant Danielle Ofri,³⁷ physician, author, and editor-in-chief of the *Belle-*

34. See Williams, *supra* n. 19, at 14–15, 18–23, 25–28.

35. College of Physicians & Surgeons, Columbia U., *The Program in Narrative Medicine, Mission Statement*, <http://cumc.columbia.edu/dept/medicine/narrativemed/references/biblio.html> (accessed Feb. 1, 2009).

36. This evidence is drawn from student evaluations, the quality of student writing, and student projects following the narrative-intensive seminar, at www.cumc.columbia.edu/dept/ps/electives/Medicine1.html. The Narrative Medicine Program at Columbia Presbyterian College of Physicians and Surgeons is described at www.narrativemedicine.org. Under Program auspices, Columbia University will inaugurate a Master of Science in Narrative Medicine in Fall 2009. College of Physicians & Surgeons, Columbia U., *The Program in Narrative Medicine*, <http://cumc.columbia.edu/dept/medicine/narrativemed/programs/index.html> (accessed Feb. 1, 2009).

37. Dr. Danielle Ofri is the author of *Singular Intimacies: Becoming a Doctor at Belle-*

vue Literary Review, similarly integrates attention to humanities and medical practice in her clinical teaching at New York University Medical Center. She holds “literary rounds” and asks interns to read and reflect on poems to help them develop the capacity to listen—to “hear the metaphor” behind a patient’s speech.³⁸

These humanities-based approaches are equally relevant in the law school context.³⁹ Just as surely as medical professionals must keep the humanity of their patients in constant view, lawyers in their interactions with clients need to keep in check the tendency to engage in purely technical problem solving, framed in the hard-edged, often ungainly language of law. Incorporating writing in the humanities into legal education focuses attention on practice skills that require an open mind and ear. It encourages a sense of client-centered communicative practice—professional writing that is clear and sharply focused because it “hears” a client’s voice and centers a client’s concerns and experiences. Using literature to help professional students develop the capacity to hear “metaphorically” illuminates this too-rarely-appreciated insight: the literary imagination and the specialized writing of professional genres are not incommensurable. When we bring into contact these seemingly discontinuous writing contexts and genres, we allow students to use both poetic writing and professional legal education to inform and enrich one another.

IV. A SYNTHESIS OF WAC-INFORMED APPROACHES

The subjects and approaches that the following conference papers have taken up weave together the multiple strands of WAC. They illuminate for us that it is in the conjunction of non-transactional and transactional writing that professional education can be particularly effective. The essays point to ways in which exposing novice legal writers to non-transactional writing can help to dee-

vue (Beacon Press 2003) (new edition expected in 2009), and *Incidental Findings: Lessons from My Patients in the Art of Medicine* (Beacon Press 2005).

38. Melissa Block, *Doctors' Stories: For a Bellevue Physician, Listening—and Writing—Are Key*, <http://www.npr.org/templates/story/story.php?storyId=1336680> (July 15, 2003).

39. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 81, 192–193 (Jossey-Bass 2007) (discussing approaches in medical education that address the importance of cultivating empathy for patients and noting relevance to legal education).

pen their understanding of course content; heighten their insight into their own process of learning and professional growth; enable them to consider critically the relationship among social policy, theory, and professional practice; and help them to communicate that understanding more effectively in their transactional writing. These essays show that reflective, narrative, and creative writing modes allow writers to step back from the structures and rhetoric associated with formal analytic writing, reconnect with their own sense of voice, and develop and revise their thoughts in their own words. This disaggregating of *analytic* work from formal legal *language* reduces the cognitive burden of working in an unfamiliar discourse and instills a measure of confidence among writers who are struggling to become socialized into a professional discourse community.⁴⁰

Narrative and other poetic writing modes offer an additional benefit by encouraging legal writers to tap into intuitive forms of thinking that can help them imagine a client's situation and perspective. Taking steps to center a client's priorities and concerns can, in turn, sharpen understanding of the context, contours, and urgency of her legal problem. And it is attaining such a client-centered analytic focus that, in the end, is the point of most formal writing.

Connecting analytic, narrative, and intuitive thinking with a capacity to hear a client's voice and modulate one's own embodies the kind of integrative approach to teaching formal legal writing that the recent Report of the Carnegie Foundation for the Advancement of Teaching recommends for legal education generally.⁴¹ Using this approach, law schools can better support client-centered professional communication, with all of the possibilities and challenges presented when law students write their way—as they must—into professional identity.

40. Williams, *supra* n. 19, at 9, 13–15, 18, 28.

41. *See generally* Sullivan et al., *supra* n. 39 (identifying interdependent capacities—cognitive, practical, and ethical-social “apprenticeships”—as essential to professional formation).