BAGGAGE OUR STUDENTS CARRY AS WRITERS

James R. Elkins

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> Poor writing, in my opinion, has produced unhappy lawyers. And here I refer not to the dismal daily task of trying to understand another lawyer's prose; instead, I make the claim that the individual writer's *own* habits produce depression on the job.
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> —Richard Weisberg, *Poetics and Other Strategies of Law and Literature*[1]

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> [A]t every juncture we bring to the world a set of expectations that are in the nature of things incomplete or imperfect.
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> —James Boyd White, *From Expectation to Experience: Essays on Law & Legal Education*[2]

Let me begin with a personal story . . . I returned from one of my summer trips to Indonesia to find a memorandum from the dean announcing that I had been impressed into the cadre of legal writing instructors. What the dean had in mind for me was punishment for unnamed pedagogical crimes or some version or other of academic treason that I had visited upon the law school. The mere thought of teaching appellate advocacy posed a sense of dread I had never before or since experienced as a teacher. I sulked around for a few days before I decided to translate the dean's punishment into a course that envisions the student as a writer, as a real writer. Legal writing is a

[1] Richard Weisberg, POETHICS AND OTHER STRATEGIES OF LAW & LITERATURE 218-219 (New York: Columbia University Press, 1992).

[2] James Boyd White, FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW & LEGAL EDUCATION ix (Ann Arbor: University of Michigan Press, 2002).

frightful prospect for students because they are taught to view it as a technical form of writing that requires the student to follow a manual of rules for writing and presentation of the writing in formula and form. There may be something "technical" on the back end of legal writing; what I wanted to do was to initiate the student first into the idea of *being a writer*. If the student can't write and doesn't want to write, whatever goes into the legal mold is likely to be flawed.

Law students tend to be relevance hounds. They want everything they learn to be relevant to the practice of law. They want tasks to be clearly identified and directly related to the work they will do as lawyers. Consequently, there was some eye-rolling skepticism when I suggested to students in appellate advocacy that we would begin the course by trying to see what we have to say about ourselves as writers.

What I had in mind was actually rather basic. I thought it might be possible to have students see writing a legal brief and then arguing their case based on that brief as a continuation of their legal education. Writing a legal brief is a way to put reading and thinking about cases and legal doctrine and legal problem-solving to work. It is more a matter of corralling what one knows as a student of law, than it is setting off to master a technical aspect of the law. To demystify brief writing, I wanted students to think of writing a legal brief as an ordinary act of writing rather than a technical feat. I told students one day that if a novelist like Norman Mailer or Bobbie Ann Mason were provided a brief introduction to the basics of case reading and legal argument and provided the cases on which a legal memorandum were to be produced, the novelists would write a better memorandum than most students in the class. I realize, of course, that the claim was a bit outrageous but my point was made in service of a premise: If you can write, you can do the writing that lawyers do, and you can

learn, without great trauma, to do it well.[3]

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I didn't bother to tell the dean who had meted out my punishment that I had written over a dozen appellate briefs for the 6th Circuit during a summer's student internship with the United States Attorney's office in Lexington, Kentucky, and still more briefs in my tenure as a trial attorney with the Civil Division at the Department of Justice. I can't say I recall any particular or extraordinary difficulties in writing legal briefs, either as a student or later as a lawyer. Like most law students, I did not consider myself a writer when I entered law school. I had written papers as an undergraduate, and while I may not have imagined myself a writer, I was never fearful about trying to write. Writing a legal brief always seemed to me a simple matter of reading the cases, sketching out an argument based on what I found in the cases, and then composing the argument in cogent structural form. The writing itself was an exercise in synthesis, a matter of doing what law students are asked to do from Day One: the habitual close reading of judicial opinions, the use of those opinions to construct course doctrinal outlines, the perusal of legal resources (e.g., law review articles) to further explain doctrinal developments, careful preparation for examinations. A legal brief looks too much like a judicial opinion to be an alien form of text. There is a short bridge from reading judicial opinions to writing a legal brief that looks ever so much like the judicial opinions that the student reads every day.

There may be writing skill and technique involved in producing a legal brief, but to learn to

[3] Few legal writing texts provide support for this proposition. One that does, notes that "The rules of good writing and good legal writing are identical. Both require clarity, logical organization, precision, and conciseness." Veda R. Charrow, Myra K. Erhardt & Robert P. Charrow, CLEAR AND EFFECTIVE LEGAL WRITING 1 (Boston: Little, Brown and Company, 2nd ed., 1995).

do it is primarily a matter of exposure and experience. *The way to learn how to write an appellate brief is to write one*. Writing briefs is the kind of activity one gets good at by doing, and doing again; writing gains traction by familiarity as it becomes a habit. Legal writing, like gardening and sailing, is not learned from instructional manuals. To profit from reading about gardening and sailing, one needs to put out a garden and set sail.

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When I began my pedagogical foray into the netherland of legal writing, I happened to be reading Tim O'Brien's *The Things They Carried*,[4] a rather remarkable story about Vietnam war soldiers and the things, physical and psychological, they carried with them into war. Lawyers sometimes talk about their work, especially litigation, as a kind of warfare, and I suspect that students in legal writing feel as if they are under attack and need magic forumla and the good fortune of the gods to learn to write like a lawyer. I began to think of law students like the soldiers in O'Brien's story with the idea of asking them: What do you carry with you into legal education? What emotional and cognitive baggage do you hump, like O'Brien's soldiers, through the bone-weary days of legal education? What do you carry, of practical necessity and of superstition, with you as you undergo the changes in identity that legal education has in store for you?

When I ask these questions, I'm mindful that we traffic in metaphor: Law students are not soldiers. Of real soldiers in real battles, most students in legal education know quite little. O'Brien's story about soldiers who ready themselves for battle provides a metaphor for a training and educational enterprise remote from the ravages of war. Our battles in law school are mostly those we have with ourselves.

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[4] Tim O'Brien, THE THINGS THEY CARRIED 3-19 (Boston: Houghton Mifflin, 1990).

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It was August when I learned of my punishment, and I tried to explain to the dean that I had never set out to teach a course with so little time to prepare. But the Dean had settled on his decision, indeed, it was one of the few times in his tenure as dean that he ever made a decision and stuck with it! My concerns unavailing, I set out to turn the tables, to create a real writing course with students talking about what it means to be a writer. I couldn't find any reason not to take as my ally in the reimagined course, the not so well-kept secret that legal research and writing courses are a dreary enterprise. The first question I presented to students was rather basic: What kind of writer do you think you are? It was an invitation to students to write about their experience as writers and to view their law school writing in the context of their life as a writer. I didn't know what the question might evoke; it was a way to get started. I certainly didn't expect to learn that all my students were experienced writers or would see themselves as writers. What I found in the students' response to the question—what kind of writer do you think you are?—was instructive and revealing.

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Here is the memo I sent to students about what I wanted them to write about as we got the course underway . . .

In beginning it will be worthwhile to find out what kind of writer you are. How do you see yourself as a writer, and how do you see yourself in your writing? What images of yourself do you have when you are called upon to write? When you write do you hear, again, a teacher's solemn warning about commas and a strong thesis sentence? Do you hear your teacher droning on about the necessity of well-organized paragraphs? Do you imagine yourself: a salmon swimming upstream? a piece of driftwood carried downstream in fast waters? a sculptor working with clay? a small child

sitting at her father's desk?

If asked, *are you a writer?* do you reply, "No, no, I'm not a writer." And, if you are not a writer, what are you? How does your claim that you are not a writer play out when you're asked to write in one of your courses?

When you write, do you experience anxiety, frustration, fear ("I have waited too late to do a good job"; "the writing isn't any good"), boredom, confusion ("I can't make sense out of my thoughts about any of this"), weariness ("I can't believe that this is going to require another draft")? Is there ever a time when you find writing to be exciting and exhilarating? What pleasures do you associate with writing? What have you learned about yourself from your previous efforts to write like a writer (if you've ever tried to do that)?

We experience some part of ourselves when we write: Laziness. Perfectionism. Contentiousness. Rebellion. Conformity. One might experience, in writing, the power of telling a story, or of getting at the truth (or insuring that no one will ever know the truth), explaining something well, or simply revealing something about your self.

Whatever you write, there must be something of *you* reflected in the written word. If your writing speaks to who you are, it must also be a distinct signal about the kind of lawyer you will be. Potters are known by the quality and craft skill reflected in the pots they make, Sumba weavers distinguish themselves by the fine intricate patterns they produce in their *ikat*. If you think of your writing as a pot, or as an intricate weaving, you can imagine your writing as having a particular shape; what you write has your signature on it. What does your writing say about you? What does it say about the kind of student you are? What writing have you done in which you have tried to make a real statement about yourself?

Do you keep a journal or book for your notes (other than the notes you keep for each of your courses)? How would it matter if you did?

When you are asked to do legal writing, what kind of baggage about yourself as a writer (and as a student) do you bring with you to this writing? What image or images do you find reappearing when you are asked to write? To identify your baggage as a writer, you might begin with this exercise: Write down four words or phrases that come most immediately to mind when you think about your own writing and yourself as a writer. By identifying and working with the images suggested in the words and phrases you use to identify yourself as a writer, there's a possibility that you'll be better equipped to confront and put to use the phantasies and fears you have about your self as a writer.

— *Susan* —

> When asked to write on my feelings and fears as a writer, I set out to do the task in an organized outline fashion. I answered what was asked of me and left it at that. I did what I thought was wanted from me. You see, I don't see myself as a writer. Actually, I hate writing. I do it because I have to, not because I want to.

When Susan says she doesn't see herself as a writer, one wonders what image she harbors as she goes about the writing she's asked to do. I didn't probe this matter with Susan, but I know she labors, as do so many students, with the sense that what she is being asked to do as a writer is a matter of necessity rather than choice. She does what is demanded of her; she submits to authority. Soldiers know necessity and authority; Susan is a good student soldier.

Susan has set out to be a lawyer. She finds this *who are you as a writer?* inquiry uncomfortable. But is it really, one might ask Susan, the case that writers and lawyers have totally different skills and sensibilities, so much so that the skill and education of one has no bearing on the

other? The surprise in Susan's comment is not that she doesn't see herself as a writer, but her strong negative feelings: She says, boldly, "I hate writing." Susan may soldier on, but she's not going to find much pleasure in writing.

— Winston —

Winston uses Susan's precise words and makes the point even more empathically: "I hate to write. These four words represent the first thoughts that come to mind when I think about writing. In my case, writing is a form of slow torture." Winston knows that lawyers are required to write, and he knows a course in legal writing, even an effort to think about writing, pushes him closer to what he most dreads.

— Susan —

The message that good legal writing is essential to being a good lawyer is not lost on Susan. She must try to salvage something from her admission against professional self-interest, her self-diagnosis as a troubled writer. The result is cognitive dissonance: hating to write and knowing how important it is. Little wonder that Susan experiences a debilitating procrastination when she tries to complete her writing assignments. She associates her procrastination with a fear that her writing will not measure up, that she will look bad when compared to students who, as Susan puts it, "have found the words that I was looking for." But then, Susan shifts gears and concludes on a high note, "When I get around to writing I seem to be able to write what I need to." Susan, it turns out, doesn't see her troubled self-image as a writer as a serious problem. Even though she describes her writing as unorganized and jumbled, and secretly fears evaluation, she's decided that what she knows about herself as a writer is little more than a momentary obstacle.

— Winston —

Winston compensates differently. His writing is, as he says, torturous. But the torture is "effective in its goal of eliciting the information or cooperation of its victim." The torture is functional. It helps him get the writing done. "My efforts at writing are effective in accomplishing my goal of taking my ideas, opinions, or research and putting it together in a meaningful and understandable way." Perhaps, but one wonders about the clarity of thinking that emerges from being tortured. Should we be surprised to find that Winston's writing is every bit as tortuous to read as it is for him to write?

— Susan —Winston —Grayson —

Susan and Winston believe that their writing is good enough for what they will be asked to do in law school. Every law student wants to believe that his writing is good enough. The student has come too far to think otherwise.

Grayson, like Susan and Winston, doesn't consider himself a writer, but he has a strong—should we say magical—belief that he can get the job done. "I never considered myself a writer. I dread writing assignments. However, I usually manage to churn out a respectable paper to fulfill the requirements because I realize it is just another hoop I must jump through in order to get to wherever I want to go with my education." Grayson says, "I realize this is a bad attitude towards writing." He isn't sure why he dreads writing, and he doesn't really "despise" it he says, but he realizes, "I don't receive any pleasure in doing it."

Susan, Winston, and Grayson go to considerable effort to overcome their self-doubts as writers; they present a good game face. They write and defend what they write; they try to wall-off and dismiss the doubts they have about themselves as writers. They fill the black hole of doubt by

doing just well enough to get by.

— Robert —

> I do not and probably will not ever think of myself as a writer. When I think about writing, I think someone may read what I have written and know how bad a writer I am.
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> When I think of writing, I think about spelling, punctuation, capitalization, and other rules of grammar I feel uncomfortable with. I still haven't figured out when to use lie or lay, rise or rose, and other little tricky rules that are found in our English language. If I ever get a grasp on these rules, I will feel much better about myself in regard to writing. But to call myself a writer, no way!

Robert is concerned that others will discover what he suspects. Like so many of his fellow students, Robert can find no positive images of himself as a writer. In the absence of positive images, or any attempt to excavate latent images that might be positive, Robert, like Susan, Winston, and Grayson, is plagued by procrastination and fear of evaluation that has him resorting to a compensatory cover-story: One of these days, he'll finally learn the rules of grammar and when he does, he'll be a writer.

One wonders how students with self-doubt and eviscerating self-assessment can take on the kind of descriptive, rhetorical, argumentative, and persuasive writing tasks associated with legal work. Writing itself, of course, might be a powerful means to address and repair the students' impoverished images, but legal writing seems unlikely to be *that* kind of reparative writing.

These students leave us with an interesting question: With such bleak self-images as writers, can the student be expected to learn legal writing without some kind of therapeutic intervention?

— Grayson —

By Grayson's assessment his education has left him "at a disadvantage when it comes to writing." He says, "During my undergraduate years I took the first two basic English classes as

required by the school. In addition, I took one other English course that was required. That, in its entirety, is the extent of my sparse undergraduate college English education."

Grayson's legal writing is straight-forward and unpolished. It reflects his education—unadorned and prosaic. Grayson's education leaves him feeling inadequate in the world of ideas, and this sense of inadequacy is reflected in his writing. He compensates by trying to limit what he will say in writing. His words are sparse. He says that the baggage he brought with him to law school writing would fit in a "small handbag."

Surprisingly, Grayson may be in better shape as a beginning writer than he knows. Grayson, unlike Susan and Winston, does not really hate writing, but his self-doubt leaves him playing the role of dutiful student, getting along as best he can. Yet Grayson holds out hope for himself as a writer.

> I realize life is not always nice and the world is not always fair, so I go on writing for professors in the manner in which they require. Who knows, maybe someday all that I have digested will come together and pay off in the form of a good paper. Maybe even with a beautifully written and extremely important appellate brief!

When asked to explore the voice reflected in their writings, most students found the effort an annoyance, and the concept of voice difficult to understand; they certainly didn't want to apply it to their own writings.[5] Grayson, with unassuming and refreshing modesty, proclaimed that he didn't fully understand the notion of voice in writing, but then went on to write about it in a careful and thoughtful way. Grayson's writing about voice seemed less an exercise of duty and more of an effort to push beyond the inadequacy of his initial ideas as he reached for some deeper sense of

[5] Peter Elbow, WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS 281-313 (New York: Oxford University Press, 2nd ed., 1998) (1981).

himself (an effort that might well have taken him beyond his education).[6]

Grayson continues to pursue the fear that his education has not made him a writer or a thinker, but in this he underestimates himself. Grayson describes voice as

> writing that naturally flows from its author. A type of writing that has rhythm. Rhythm, like what you would expect to hear if the author was talking with you. Voice also seems to be something in the writing that identifies the writer without actually knowing who he is . . . . [Writing with voice will] identify the writer.

Grayson writes about voice in much the same way that he speaks. His writing is natural, not polished or perfected, but natural in the sense that he doesn't sound like he's trying to mimic a writer. Grayson worries about his voice being "lost in the words" and yet he hopes to have "the right words for the situation." When Grayson writes, even about writing, he doesn't sound defensive; there's no posturing in his writing.

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Some law students lay claim to being writers. They don't hate writing, and they are not shy about it. When asked to write they do it, not in dutiful resignation, but with relish. In contrast to students like Susan, Robert, Winston, and Grayson, consider:

— Rachel —

Rachel is full of herself. She's not only fully convinced that her writing is adequate but that it's another of her highly developed skills, a skill that will make her a successful law student.

> The answer to the question "who am I in my writing?" necessarily depends upon the nature of the writing. Writing is an endeavor which involves interaction between

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[6] Grayson might re-evaluate his negative self-image if provided accounts of writers and how they overcome formidable obstacles and pursue the self-learning that makes it possible for them to write. Grayson might find it instructive to learn that most writers do not attribute their success in writing to what they learn in college. Rather, most writers have made themselves into writers and do not credit their education for having done so.

> myself and the writing's purpose, audience, scope and nature. As such, those parts of me which are displayed or ingested into the writing will vary—not unlike the different behaviors or personality I display in the various situations I am in.
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> When I am writing for my eyes alone, I attempt to be brutally honest. I allow myself to be vulnerable, to say stupid things and be irrational. I play. I philosophize. I complain. I voice my fears, hopes, loves. I am a person in a holistic sense.
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> When I am writing a letter I display warmth, concern, caring, sharing, inquisitiveness, honesty, a bit of silliness, and occasionally, confrontational.
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> When I am writing a memo, I am tactful, informative, sensitive to the issues and the audience, prepared, occasionally light-hearted and kind.
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> When I am writing something of an academic or professional nature, I want to reflect thoroughness, awareness, understanding, a firm position and a professional stance. I advocate my human rights and egalitarian orientations.

Rachel, unlike her colleagues who avoid writing if they can, takes a different approach. She says: "I strive to be the person that I am. I try to reflect this person in my writing. I risk myself in my writing. Sometimes my writing falls flat on its face. Well, sometimes, so do I. So what?"

Rachel was eager to reflect on the voice she found in her writing, fully convinced as she was that she knew exactly what voice was, when it was most resonant and when it was absent. And there is, in all her self-confidence, a hint of insight, when she confirms that her voice is actually a "bit all knowing." Rachel says, "I want my writing to be intimately connected with my person. I want my writing to have impact." Rachel was not modest about her writing.

We were only a few weeks into the course when I received a notice that Rachel had dropped it. I suspect Rachel didn't want her high opinion of herself as a writer put to the test.

— Curtis —

In contrast to the students who find themselves in a sea of doubt and self-loathing about writing, we have those few students like Rachel who are convinced that they are top-notch writers.

And, we find a few, like Curtis, who are simply pompous and overbearing. Here is Curtis, touting his wares as a writer::

> A writer? Of course I'm a writer! I mean, I'm a Law Student. I had to give a writing sample to get into this place. I rewrote the paragraph on the application, the one that explains why I thought they should let me in, three separate times, just to find the right theme. And then, I re-worked that until it was as polished as a marble.
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> Of course I'm a writer, I'm not illiterate. I've passed all my grades and gone on besides. On to explore more advance work in several fields. And I've let people know that I understand those fields and I've done that with writing.
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> I function by writing. I've introduced myself to people through my writing. I've gotten jobs and kept them, earning my keep, by writing. Of course I'm a writer.
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> Something as important as writing has to be worked at, and I've done that work. I continue to do that work. It's a never ending struggle. In writing I have to overcome the procrastination, the inertia that tries to keep me from beginning. But overcome it I do. The writing gets done. I have to deal with the fear that I'm not saying what I mean, or not saying all I know, or not saying it strong enough or clear enough. But deal with it I do. I reread, and rewrite, and have my wife read, and help me rewrite. I rewrite until I can find a place where we [the writing and I] can rest together . . . .
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> I've chosen a career where writing makes all the difference between success and failure. So, I continue to work at writing, to make it better, to make it right. Of course I will. I'm a writer.

Curtis writes boldly about himself and his skills as a writer. There is his commendable pledge to work to learn more about writing, yet, suspicion lingers. With Curtis, there is much bravado and the posturing of a peacock. The question is whether there is any substance behind the big talk.

At one point, he turned in a hastily scribbled handwritten assignment in which he expressed quite different sentiments.

> I would not claim to be a writer, at least that is not how I think of myself. I can remember a time back in high school when I was so excited by reading good writing that I wanted very much to be a writer. I even started college as an English major. Occasionally, I still think that I might like to be a writer, but several things hold me back.

> Lack of discipline is one. It seems very difficult to organize my thoughts before putting pen to paper. And so, I put off starting on a writing project. Procrastination seems to feed the confusion. The longer I put it off, the harder it is to start.
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> First, I have trouble deciding which ideas are the strongest, and then how to get from one idea to another. I don't know how to express my ideas strongly so I can grab and keep my readers attention?
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> Ah, my reader! Anymore, my reader is going to validate me in a way which may have a significant impact on my life. Now that is something to fear!
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> But the writing is necessary and must be done. So, the first line finally comes and then the next and the next. And some lines get changed and some stay.

Curtis seems to have invented a new *persona*, one that has him being a confident, self-assured, skilled writer.

— Deborah —

> I believe I am a good writer. I may not be one of the best, but I have always thought writing to be high on my list of "talents," of which I don't have a lot. The thought of writing has never scared me. I know that many people do not have the ability to transfer thought to paper. Few people can do it and do it well. I think I am one of those people who can form a thought and transfer it to paper essentially in its original form. My writing is usually clear, easily understood, and gets my message across.

Deborah relates the source of her confidence to her love of creative writing: She had "won some awards in junior high school." She talks about being a reader; she fantasizes writing like Stephen King, who "expresses thoughts that we all have but would never put into writing." Deborah praises Stephen King's ability to "effectively convey thoughts and emotions behind the words on the paper. He makes the reader feel what he wants them to feel. I would love to be able to use words with such power." Deborah would like to have, as a writer, the ability "to convey my message so well that the reader reacts, preferably the way I would like them to."

Deborah's writing has been "good enough" to win awards, and she's betting that her old awards mean that her writing is still "good enough." But Deborah seems whisked off into wishful, magical thinking in her notion that words can be used to "make" others feel the way we want them to feel. Deborah's heart may be in the right place, but there is confusion that lies at the core of everything she writes.

— Wilson—

Wilson expresses disappointment in being asked to write about himself as a writer. He is clearly put off by being asked to rethink, edit, and revise his writings. "My first attempt was meticulously, nay, excruciatingly crafted to provoke the exact response" it received. The response Wilson refers to was critical. Wilson was informed that his writing was strained, and heavily laden with "forced humor." Asked to respond to a colleague's reaction to his writing, Wilson claims to have nothing to say. I get the impression that Wilson is playing a cat and mouse game with us. His writing is riddled with contradictions. Virtually every affirmative statement he tries to make is undermined by the sentence that follows it. Wilson claims not to see these contradictions; he is unwilling to confront the fact that his self-assessment of his writing is far different than my assessment. When this is pointed out to him, Wilson called the different assessments an "enigma." Wilson argues that his writing would be "spoiled" by trying to think about himself as a writer. As he put it: "How does one choose a clearer, more direct mode of expression, and still remain an enigma?" Wilson likes to play games; he sees himself as a clever man.

Asked to write about himself as a writer, to reflect on what he has written and to respond to a critique of his writing, Wilson finds it "extremely difficult," but admits that it "stimulated a great

deal of thought." He says he is startled to find himself in "a maze of contradiction." And yes, being asked to write about himself does make him defensive because "images of myself as a writer go largely hand in hand with my images of myself." Wilson hasn't fully learned the subtle psychological strategies of compartmentalization that he will go on to hone as a law student. His deep-lying confusion is best described in his own words:

> I see myself in my writing as both insecure and humble, yet know that I am pretentious, cocky, and proud. I disdain the criticism of others, yet covet their acceptance and approval. I feel I am an effective, competent writer, but embarrass myself with childishness, triteness, lack of substance, predictable style, and limited imagination. I have penned many a pulp of pabulum. I see my writing as mundane, yet fancy it to be unique.

Wilson claims to be attracted to writing because it permits him to "choose from a number of voices, providing the perfect symbiotic relationship with my schizoid personality." Wilson, like Rachel, thinks he can adopt whatever voice he needs, simply by knowing the "writing's intended purpose and audience." He says:

> It is rare that I find myself using just one voice, or see myself as the same image when I ponder the totality of my various writings. I have a particular voice in a romantic letter . . . . I write government memoranda in which I employ a more impersonal, professionally courteous, communicative voice. When I write to my family, I use a voice compatible with what I view as their perceptions of me. We play different roles for different people, and these roles are influenced by our estimation either of what we feel is expected of us, or by the impression we actively wish to impose.

So long as he can play Proteus, the shape-shifting god, he can enjoy writing.

Wilson so much wants to see himself a writer he willingly panders to his audience, but he realizes there's a risk in doing so. He finds it difficult to locate his own voice in the "varied types of writing" he does. The reason is clear: "I have always attempted to inject what I considered 'voice' into my writing. I felt that my voice was ever-changing, depending on the type, purpose, and

intended audience of the writing. Yet, I considered the different voices my own. I thought of voice as 'style.'" Legal writing poses no threat to Wilson; the panderer knows how to adapt. He characterizes his present writing in a job outside the law school where he

> strives to say a great deal in as few words as possible . . . . I find myself simply putting things together, as clearly as I can; my voice in this context seems a bit secondary, or detached. My journalism background has oriented me to emphasizing facts, or telling a story.

When Wilson tries to come to grips with his own voice, one that carries from one writing to another, he equates voice with the style or form of writing used for a particular audience. He relates writing voice to the situation, not to himself as a writer. Wilson sees voice as a function of audience and purpose: "The voice that we create may more truly evidence our 'inner voice' than does the voice by which others know us (or think that they do)." For Wilson, the only inner voice he knows is the stylized, packaged, audience-driven one.

In Wilson's efforts to think, and talk, about himself as a writer, we find a student trying to posture his way into a writing self: "Am I a writer, you ask? I believe my certificate is in my baggage. Let me show . . . oh my! It seems to have been left behind. Fear not—my lackey shall retrieve it." Wilson is a smart-ass. When I tell Wilson how I read his work, he responds:

> Patient and esteemed reader, I may tread on thin ice (without my credentials) in my efforts to convince you of my stance among the great word-spinners of our time. Oh doubting Thomas! I know now, how the Wizard felt when the curtain was mercilessly pulled—the once Great and Powerful Oz tragically reduced to a pathetic and broken old gentleman. Empathize with me then, dear reader. Like Oz, I shall rise from the rubble of my shame and humiliation with as much dignity as I can muster. Unlike Oz, however, I have no gifts to offer (oh, that my lackey would hurry!) with which to win back your awe and respect.

Wilson finds the questions posed about his writing "insidious," even though "posed ever-so delicately in lamb's clothing." Confronted with a critical reading of his writing, it has "placed me,"

Wilson says, “in a quandary. Do I damn the torpedoes, though able to see clearly the looming icebergs? Or, even more hideously, is it time now to cut the crap, lose my baggage, and attempt to be bland, honest, and sincere?” Interesting dilemma Wilson has created for himself, is it not? Honesty is not particularly attractive to Wilson; he associates honesty with blandness and “looming icebergs.”

Wilson has a background in both journalism and literature. With this education, he fancies himself a student “who can recognize and appreciate good writing, and correct bad writing, without necessarily having the talent to produce good writing myself.” Wilson is a sophist in training; he claims to be a writer, that he is educated to write, but he’s not willing to promise he can produce writing of any merit. But there’s a cost in preserving his elaborate, fanciful facade. Wilson must continually reassure himself that his story is as good as he wants to think it to be. But then, there’s that feared truth: Wilson may find himself in a situation where he’s in the room with real writers who don’t give a damn about his fancy dance.

Wilson describes me as a “doubting Thomas.” Yet, he admits he’s on “thin ice” in his rhetorical efforts to convince me that he is a “great word-spinner.” In the play of bravado, conflict, ambivalence, and cleverness, Wilson wants to convince me that he will eventually opt for honesty and sincerity, that he’ll “cut the crap.” He says, “as the clock is ticking, and mortals are finite, and I am a mortal, I shall have to opt for honesty and sincerity.” But his bloviated silliness is undermined by his recognition that he may not be who he claims to be: “I do not fancy myself as a real writer, because I never write for my own enjoyment.” But even this honest expression of discontent, like so much of his writing, is not allowed to stand, and so he must contradict what he has just written: “My background in literature and journalism has afforded many opportunities to write and I do enjoy

it." Wilson seems delighted and strangely oblivious to the way his every statement, claim, and stance is undermined by his own words. Wilson cannot see that his sophomoric posturing has totally undermined his writing.

I leave Wilson with one of his own contradictions: "I harbor no fears about myself as a writer, unless some wretch actually intends to read what I've written. I suppose I am as insecure as the next person."

— Tamara —

We know that writing evokes fear and loathing, anxiety about skills and talents, questions about one's education, and in some instances, audacious claims of self-confidence. For Tamara, writing is not simply an instrumental task, but a form of therapy.

> When I have something to say to someone that I just can't bring myself to say, I write it down. If things get to be too much to handle, I purge myself by writing it all out. At times, I can't control it; the words trip over each other trying to get onto the paper. Most of these writings get thrown away, or mailed to my best friend in Texas. Yet, some of my best writing comes during these times.
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> I'd like to learn to generate that same energy and excitement when I have to write. Then maybe I'll look at papers, memos or briefs as something I want to write instead of something I have to write. I guess I'm simply hoping to regain the love of writing that I lost somewhere along the way.

Tamara has discovered the therapy of language; she has hope that her writing in law school and as a lawyer might be a source of "energy and excitement."

— Sherri—

> I have always used writing as a means of expressing the emotions I didn't have the courage to express in person. To avoid conflicts and serious, emotional conversations, I would write what I was feeling instead of talking about it. I have more confidence in my writing than I do in speaking. A fear of having a listener interrupt me or twist my words, not giving me a chance to express my view, chased me into the realm of writing.

Sherri uses writing as a way of gaining control she feels she lacks when she speaks. Writing has, she claims, helped her "through many personal crises."

One wonders how Tamara and Sherri and their positive views of writing will survive a regime of legal writing. Will their legal writing teachers be able to tap these positive images and further develop them? And if they do not, what will happen to these empowering images of writing as a source of energy and hope?

Sherri finds that writing is "a quiet way to escape the routine," the "world of television, music, and small talk." She uses writing to separate "the important from the trivial." "I get few complaints about my writing," says Sherri, and reports being told by English professors that she writes well. "Of course, that's their opinion. My own is that my writing is good but there will always be room for improvement. I am constantly striving to make my writing more powerful, aggressive, and thought-provoking."

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Henriette Anne Klauser, in *Writing on Both Sides of the Brain*, says we have tapes playing in our head that tell us who we are as writers.[7] Our students, when they arrive in law school, bring with them images of themselves as writers. These images bear down on them, take up space; sometimes these images suck the student's writing down into a vast dark bottomless hole. Students arrive at law school from old writing situations with all sorts of notions about themselves. Some of the baggage they bring with them is accessible, some of it is not. Some of it is incapacitating, some of it a necessary illusion.

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[7] Henriette Anne Klauser, WRITING ON BOTH SIDES OF THE BRAIN 8 (San Francisco: Harper & Row/Perennial Library, 1986).

The baggage that students bring with them takes its toll. Our students are procrastinators and perfectionists, plodders and thinkers, resentful and eager, fearful and courageous. These stances and contradictions—embedded in the student's image as a writer—infect the student's writing; they promote and undermine the student's effort to master legal writing styles and to write for a legal audience. We see in a student's twisted, misshaped, defensive language, old failures that can entangle a legal argument and make it virtually incomprehensible. The firewall that separates the student's image of herself as writer and the legal writing she produces is an imaginary construct, a transit fiction.

It is, I think, a mission of folly to assume that legal writing is a technical enterprise, an enterprise that can be taught and learned without taking account of the impressions and images that accompany the student to law school and are found everywhere in the student's writing. The baggage the student carries as a writer can perpetuate bad writing.

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Law students are sent into legal writing like the soldiers Tim O'Brien memorializes in his fiction. They "plod along slowly, dumbly, leaning forward against the heat unthinking . . . simple grunts . . . toiling up the hills and down into the paddies and across the rivers and up again and down, just humping, one step and then the next and then another, but no volition, no will . . . ."[8] In legal writing, students go to battle with themselves and with an enemy they are not asked to name, see, or understand. Legal writing for many students is akin to war of the kind O'Brien describes, "a kind of emptiness, a dullness of desire and intellect and conscience and hope and human sensibility."[9] In

[8] O'Brien, *supra* note 3, at 15.

[9] *Id*.

legal writing, there are plenty of soldiers who have "no sense of strategy or mission. They search the villages without knowing what to look for, not caring, kicking over jars of rice, frisking children and old men, blowing tunnels, sometimes setting fires and sometimes not, then forming up and moving on to the next village, then other villages, where it would always be the same."[10]

The pressures are enormous; law students carry on. They survive. They have humped from village to village, course to course, carrying "all they could bear and then some . . . ."[11] They felt the pressure, slough on, shrug off their doubts, self-medicate as needed, become numb as necessary. "Some carried themselves with a sort of wistful resignation, others with pride or stiff soldierly discipline or good humor or macho zeal."[12] And yes, "there were times of panic, when they squealed or wanted to squeal but couldn't, when they twitched and made moaning sounds and covered their heads and said Dear Jesus . . . and made stupid promises to themselves and to God and to their mothers and fathers . . . ."[13]

If law is war, and legal writing is one of the battles, it will be the rare person who can embrace it and love it. There is much to dislike in legal education. Still, students adopt a survivalist stance, and hump from course to course, legal doctrine to legal doctrine, professor to professor. They do what the sergeant says, ever hopeful that they will soon be able to get on with their lives. They hump on with the hope that the Good Life will catch up with them, and they can hang on to it when it arrives. If they can survive legal writing, and their own perverse mix of empowering and

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[10] *Id*.

[11] *Id*. at 9.

[12] *Id*. at 19.

[13] *Id*. at 18.

disempowering images, if they can survive their images of themselves as writers, then surely something worthwhile lies ahead. For now, the student must simply be a good soldier.