

# THE THINGS THEY CARRY INTO LEGAL WRITING (AND LEGAL EDUCATION)

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## I.

In the opening pages of Tim O'Brien's *The Things They Carried*,<sup>1</sup> there is a remarkable essay in the form of a story about soldiers and the things, physical and psychological, real and metaphysical, they carry with them into war. O'Brien is a masterful and artistic story-teller whose "fictions" are carefully crafted meditations on story-telling, reality, and truth. There is much more to be said about O'Brien as a story-teller, but it is the pure poetic narrative power of his examination, article by article, soldier by soldier, of what soldiers carry into battle that provides the impetus and compass for this essay. O'Brien's story about soldiers who ready themselves for battle, battles that will be both real and imagined (and in O'Brien's novels, as in life, the real and the imagined are often blurred), provides a metaphorical way of thinking, not only about soldiers, but about a teaching enterprise seemingly remote from the world of war. It is the prosaic world of legal education, where I teach and my students go about their work, that we do battle.

Before I turn to more prosaic matters, Tim O'Brien's soldiers and the things they carry:

- "First Lieutenant Jimmy Cross carried letters from a girl named Martha, a junior at Mount Sebastian College in New Jersey. They were not love letters, but Lieutenant Cross was hoping, so he kept them folded in plastic at the bottom of his rucksack."
- "The things they carried were largely determined by necessity. Among the necessities or near-necessities were P-38 can openers, pocket knives, heat tabs, wristwatches, dog tags, mosquito repellent, chewing gum, candy, cigarettes, salt tablets, packets of Kool-Aid, lighters, matches, sewing kits, Military Payment Certificates, C rations, and two or three canteens of water."
- "Ted Lavender, who was scared, carried tranquilizers until he was shot in the head outside the village of Thank Khe in mid-April."

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<sup>1</sup> Tim O'Brien's, *THE THINGS THEY CARRIED* 3-19 (Boston: Houghton Mifflin, 1990).

- “Norman Bowker carried a diary. Pat Kiley carried comic books. Kiowa, a devout Baptist, carried an illustrated New Testament that had been presented to him by his father, who taught Sunday school in Oklahoma City, Oklahoma.”
- “Almost every one humped photographs.”
- “In addition to the three standard weapons—the M-60, M-16, and M-79—they carried whatever presented itself, or whatever seemed appropriate as a means of killing or staying alive. They carried catch-as-catch-can.... Lee Strunk carried a slingshot; a weapon of last resort, he called it.... They carried all they could bear, and then some, including a silent awe for the terrible power of the things they carried.”
- “The things they carried were determined to some extent by superstition.”
- “Some things they carried in common. Taking turns, they carried the big PRC-77 scrambler radio, which weighed 30 pounds with its battery. They shared the weight of memory. They took up what others could no longer bear. Often, they carried each other, the wounded or weak. They carried infections. They carried chess sets, basketballs, Vietnamese-English dictionaries, insignia of rank, Bronze Stars and Purple Hearts, plastic cards imprinted with the Code of Conduct. They carried diseases, among them malaria and dysentery. They carried lice and ringworm and leeches and paddy algae and various rots and molds. They carried the land itself—Vietnam, the place, the soil—a powdery orange-red dust that covered their boots and fatigues and faces. They carried the sky. The whole atmosphere, they carried it, the humidity, the monsoons, the stink of fungus and decay, all of it, they carried gravity. They moved like mules.”
- “They plodded along slowly, dumbly, leaning forward against the heat, unthinking, all blood and bone, simple grunts, soldiering with their legs, 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, because it was automatic.... [T]he war was entirely a matter of posture and carriage, the hump was everything, a kind of inertia, a kind of emptiness, a dullness of desire and intellect and conscience and hope and human sensibility.... They had no sense of strategy or mission. They searched 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.”

- “They carried their own lives. The pressures were enormous.”
- “For the most part they carried themselves with poise, a kind of dignity. Now and then, however, 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 flopped around on the earth and fired their weapons blindly and cringed and sobbed and begged for the noise to stop and went wild and made stupid promises to themselves and to God and to their mothers and fathers, hoping not to die.”
- “Some carried themselves with a sort of wistful resignation, others with a pride or stiff soldierly discipline or good humor or macho zeal. They were afraid of dying but they were even more afraid to show it.”

Lawyers sometimes talk (loosely and unconsciously) about their work, especially litigation, as a kind of warfare, as a battle among and between legal warriors. And, if we follow the late Robert Cover, the legal system has more to do with violence, even if subdued, sublimated, and disguised, than we are likely to admit. We have then, in our images and rhetoric a displacement that allows us to talk and think like soldiers, even when that is not what we are.

While there is much more to be said about lawyers (and law students) and their battle, warfare, and warrior imagery and how it lurks in our imaginal and rhetorical shadow life, I want to propose only a simple pedagogical exercise. Imagine law students as something like soldiers in training who have set about to prepare themselves for battle. We know that the battles that lie ahead for soldiers and students of law are of a dramatically different sort, but for the student as for the soldier there is much at stake.

## II.

What do our students carry with them into legal education? What emotional and cognitive baggage do they “hump” through the weary days of legal education? What do they carry, of necessity, superstition, memory? I have been asking this course, in various disguises, for many years. I found a different setting in which to ask it, when a Dean, for reasons of his own making, decided to administer academic punishment (or so he and I assumed it to be at the time) by “assigning” me to teach

appellate advocacy—a course in which law students are asked to research and write their first appellate brief. I resisted the assignment, but ultimately decided that a course devoted to writing could not be all bad. Writing is, after all, at the heart of the lawyer's craft and I began to see the possibility of using the course to learn more about lawyers and the craft of writing. And so it was, attempting to learn something about students (and myself), that I found a way to turn what had meant to be a Dean's punishment (for pedagogical crimes unarticulated) into an interesting pedagogical exercise.

In this moment of teaching, there was yet another occasion (and they are all too rare) to have law students pause in their relentless headlong rush to get their legal training behind them, a pause that would allow them to address themselves as writers. I wonder whether it is not in fortitous detours like the one I undertook with my students that we find that in law school instrumental enterprises—a legal writing course—students reenact larger dramas that shadow their quest to become a lawyer.

To find out what kind of writers my students think themselves to be, I decided to ask them. I posed questions that would allow them to write about themselves and about writing in a way that would allow us to explore the personal, human dimension of the instrumental writing work we had been "assigned" to do. While I did not expect my students to consider themselves writers,<sup>2</sup> I found that each did exactly that, even in denial. What follows is the commentary that served as the basis for the students' writing about themselves as writers.

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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? Do you call yourself a writer? What images (of yourself and the act of writing) are present when you are called upon to write? What kind of self are you when you write? When you write do you hear, again, a teacher's solemn warning about opening sentences, that thoughts must be organized into paragraphs? Do you imagine yourself

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<sup>2</sup> One would not, I assume, expect law students to think of themselves as writers. Indeed, we require no direct proof on the part of applicants to law school that they are accomplished writers (and should be little surprised that so many have trouble performing as if they were). In fact, we ask only that our applicants master the ability to secure high grades (in courses which often require no serious, sustained writing) and perform well on a law school "aptitude" test (the infamous LSAT).

a salmon swimming upstream, a piece of driftwood carried downstream in fast waters, a sculptor working with clay, a small child sitting at your father's desk?

If asked, "are you a writer?" and you reply, "no, no, I am not a writer?" then, who what you? How does your inability to imagine yourself as a writer affect your work as a student of law?

When you react to these questions about the image you have of yourself as a writer, try to focus on your experience as a writer. In doing the writing you have already done, you must have experienced something of yourself, perhaps parts of you that you dislike (and would like to disown) or parts you admire and wish to preserve and protect.

In writing, 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 writing is exciting and exhilarating? Painful? What pleasures do you associate with writing?<sup>3</sup> What have you learned about yourself from your efforts to write?

We experience some part of ourselves when we write. We experience laziness, perfectionism, rebellion or conformity, contentiousness and argumentativeness, a need to be authoritative. One might experience, in writing, the power of telling a story, or getting at the truth (or insuring that no one ever know the truth), or revealing some something new about yourself. Whatever you write—legal or otherwise—there must be something of you reflected in the outcome. Potters are known by the quality and craft skill distilled in their pots, weavers by the fine, intricate, shaped patterns in their baskets. If you think of your writing as a pot, or a basket, you can imagine your writing taking a particular shape and having a signature. What does your writing say about you (the writing that you have already done and the writing that you will do as a lawyer)? What writing have you done that reflects your "voice"? Do you keep a journal, diary, or notebooks?

Remember: what you carry you will find a place for in your writing. Your writing speaks to who you are, to the kind of lawyer you have set out to be. It is worthwhile to know what kind of baggage you bring with

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<sup>3</sup> Speak for yourself, teacher: There is the quiet pleasure in writing late into the night in my upstairs study; pleasure at seeing how the sometimes labored, confused, frantic struggle to say what I mean has become a reality. There is a sense of accomplishment when a mosaic of words sound "right." There is the exhilaration that comes when words will do what I want them to do and the awe I experience when I understand how the words are doing what they want to do. And there is always the ambivalent anticipation of having an "audience" and the response of a "reader."

you to legal writing, what kind of image(s) you have taken on as a writer. (The process of excavation is easily begun: 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 these images you will be better able to confront the fears and hopes you may have about your self as a skilled writer.

### III.

—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.

Susan's<sup>4</sup> task orientation and sense of duty suggest a student soldier mentality. Tell her exactly what is to be done, read, learned, written, and she will organize the task, do what is asked, and get on with life. When Susan said she didn't see herself as a writer, one wonders what image she harbors to get her through the labors at hand. I didn't prob 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. Soldiers know necessity and authority and in this sense Susan is the good soldier.

One couldn't expect Susan to be a writer of the sort who might have studied at the Iowa Writer's Workshop. It is not a writer but a lawyer she has set out to become. But the idea that writers and lawyers have different skills and sensibilities, and require different educations, may turn out to be problematic. The surprise in Susan's position colleagues who voiced similar notions is not that they did not see themselves as writers, but their strong negative feelings—"I hate writing"—that accompanied their strong sense of duty. Susan was not alone when she said: "I hate writing." We simply don't know who or what might have been keeping her company.

—Winston—

Winston uses Susan's precise words and makes an even more emphatic point: "I hate to write. These four words represent the first

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<sup>4</sup> The names of students have been changed.

thoughts that come to mind when I think about writing. In my case, writing is a form of slow torture.” Surely, such feelings put Winston and Susan, in a precarious position. They know lawyers are required to write and so a course in legal writing involves training to do what the student most dreads and abhors. Aversion, fear, loathing—writing propitiates the god of Necessity.

Law students know that writing is central in their mastery of legal reasoning and legal problem-solving (at least as tested in the infamous end of semester law school examination). Success and failure in law school are determined in large part by one’s writing. Perhaps, more accurately, we might say that success is attributed to those who have the *talent* and *skill* to write well, and a *will* to understand what they are being asked to do. Students want for themselves, no less than what their teachers want, to be good writers. They, and we, their teachers, fear that failure in writing results in bad lawyering.

[G]ood legal writing is essential to being a good lawyer. Cases are routinely won and lost because of the quality of briefs and pleadings. Carefully prepared counseling memos steer clients out of trouble and help them go about their business, while poorly written memos can lead clients to disaster.<sup>5</sup>

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Good legal writing is a virtual necessity for good lawyering. Without good legal writing, good lawyering is wasted, if not impossible. Good lawyering appreciates and is sensitive to the power of language to persuade or antagonize, facilitate or hinder, clarify or confuse, reveal or deceive, heal or hurt, inspire or demoralize.<sup>6</sup>

—Susan—

Legal education tries, albeit ambivalently, to make the case that good legal writing is essential to being a good lawyer. Susan, knowing as most students do that good writing is associated with good lawyering, must try to salvage something from her admission against professional self-interest. Susan tries to be a good student/soldier but she is self-diagnosed as a troubled warrior/writer. The result is cognitive dissonance, hating to write and knowing how important it is. Little

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<sup>5</sup> John C. Dernbach, *The Wrongs of Legal Writing*, 16 (2) *Student Lawyer* 12, at 20 (October, 1987).

<sup>6</sup> John D. Feerick, *Writing Like a Lawyer*, 21 *Fordham Urban L. Rev.* 381, 381 (1994).

wonder that Susan experiences (and confesses to her teacher) a debilitating procrastination when she tries to write. She explains the procrastination by associating it with a fear that her writing will be compared unfavorably with that of her colleagues. She fears she will look badly because other students "have found the words that I was looking for."

Susan reveals conflict in her writing but cannot admit it to herself. She concludes: "When I get around to writing I seem to be able to write what I need to." Susan has not even begun to confront her troubles as a writer into a virtue, her conflict (knowing the place of good writing and knowing that she hates to write), and her vulnerability (knowing she must defend her writing and knowing that it does not compare well with the writing of others, that others have access to "words" she is "looking for"). Susan must create a self-image as a "good enough" student, as a competitor, and a survivor unorganized and jumbled writing, and her secret, fears evaluation undermine the cover story without adequately understanding how her self-image she has devised for herself as a student.

—Winston—

Winston, the colleague who shares Susan's strong feelings and dread of writing, compensates differently. While writing is torturous for him, he considers the torture "effective in its goal of eliciting the information or cooperation of its victim"—that is, 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 might wonder how much clear headed thinking gets down under threat of torture. In examining Winston's writing, I found it as tortuous to read as it was for Winston to write it.<sup>7</sup>

Winston ends his commentary with a rather bland assertion laced with magical thinking: "I hate to write, however, I am a writer. I recognize the need to write down ideas and opinions, not only for my

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<sup>7</sup> There are certainly writers, good writers, who claim that writing is a continual battle with one's fears, that writing is never easy, and as Winston found, torturous. If there are writers who have managed a writing life with this experience of writing, we might want to know more about how this feat was accomplished and whether it might work as a lawyer/writer.



benefit, but also for the benefit of others. Today's society could not exist without writers."<sup>8</sup>

—Susan—    —Winston—    —Grayson—

Susan and Winston have willed themselves into the belief that their writing is good enough for law school purposes. In this belief they have the company of colleagues. Every law student wants to believe that his writing is good enough. (How could it be otherwise? Surely, someone would have told me by now if it were otherwise!) Grayson, like Susan and Winston, doesn't consider himself a writer but has a strong (magical) belief that he can get the writing 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, doesn't really "despise" he says, but realizes he doesn't "receive any pleasure in doing it."

I sense that Susan, Winston, and Grayson work hard to overcome their self-doubts as writers and overcompensate because they cannot seek the help they admit they need. By failing to confront their cover stories ("what I do is good enough") and their belief that they will get by ("haven't I always"), they will leave their course on legal writing, and perhaps legal education, with doubts resolved by ego-defenses that cut them off from lessons they might have learned. They write like soldiers, who must constantly engage in rituals to ward off panic. They fill the black hole of doubt about writing with Necessity, fueled by phantasies of a Future when there will be no unwanted tasks, no Dread, no Teacher to evaluate them. In this mythic future, Necessity is replaced by the Good Life that lawyers learn to covet.

—Robert—

On this possibility that writing exposes a black hole of professional life, consider 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

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<sup>8</sup> Winston, unlike Susan, is eager for others to read his writing, and I came to think of him as the sado-masochist in the class.

and know how bad a writer I am.

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, like Susan, is concerned that others will discover what he suspects—he is a bad writer. Like so many of his colleagues, Robert reports no positive images of himself as a writer. In the absence of positive images (or therapeutic excavation of latent positive images), Robert, Susan, Winston, and Grayson are plagued by procrastination, fear of evaluation, and resort to compensatory, “thin” cover-stories to quiet their cognitive dissonance.

One wonders how students with this constellation of self-doubt and eviscerated imagery will be helped or harmed by the kind of technical and instrumental pedagogical associated with the traditional legal writing course. Writing may be a powerful means to address and repair impoverished images, but legal writing seems unlikely to be the kind of writing that could perform such ameliorative work.

Susan, Winston, and Grayson leave us with some interesting questions: Can a writing self, and images that redeem writing, be rescued from the bleak imaginal terrain these students describe? Can legal writing be learned without therapeutic intervention and a more direct confrontation with the face-less, form-less images that students have of themselves as writers?

—Grayson—

Grayson, who claims to have no history as a writer,<sup>9</sup> explains: “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.” By Grayson’s assessment his education has left him “at a disadvantage when it comes to writing.”

Grayson’s legal writing was straight-forward and unpolished; it reflected his education—unadorned and prosaic. Grayson’s education

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<sup>9</sup> How can a student not have a history as a writer? But then, if you do not see yourself as a writer, then you will have erased the history that would have sustained the images of self-as-writer.

had left him feeling inadequate in the world of ideas and he wrote accordingly. He was concerned that his writing would reflect the inadequacy of his education. Consequently, he limited himself in what he attempted to say in writing. His words were sparse. He says of the baggage he brought with him to law school writing, it would fit a "small handbag."

Surprisingly, Grayson may be in better shape as a beginning writer than he knows, perhaps better than his writing teachers in law school will admit. Grayson, unlike his colleagues, Susan, Winston, and Grayson, does not really hate writing, but his self-doubt leaves him little choice but to be a dutiful law student soldier. 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" found reflected in their writing (assigned as a reading Peter Elbow's exploration of the subject<sup>10</sup>), most students found the notion annoyingly elusive and difficult to apply to their own writings. Grayson, with unassuming and refreshing modesty, proclaimed, as did his colleagues, to not fully understand the notion of "voice" in writing, but went on to write about it in a careful and thoughtful way. His writing about "voice" seemed less an indication of duty or inadequacy, more an effort to reach some deeper sense of himself, an effort to express a part of himself that his education had not fully prepared him to articulate.

Grayson assumes, as so often in his writing, that his education has not made him a writer or thinker, but he underestimates himself.<sup>11</sup> Grayson describes writing "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

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<sup>10</sup> Peter Elbow, *WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS* 281-313 (New York: Oxford University Press, 1981).

<sup>11</sup> Grayson might re-evaluate his negative self-image if provided accounts of writers and how they overcome formidable obstacles and pursued the self-learning that has made 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 learned in college. Rather, most writers have made themselves into writers notwithstanding their education.

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.

I suspect that Grayson can write about voice because his own writing is so close to the way he speaks. His writing is natural, not polished or perfected, but natural in the sense of being associated with a self that has not become a fully dedicated mimic. Grayson worries about his "voice" being "lost in the words" but his fears are largely unrealized. "[T]he words that I use must be the right words for the situation." For some students, this claim would fit a pattern of negative self-images to be covered over with a thin patina of arrogance. For Grayson, the statement sounds exactly right, exactly like his writing, unpretentious and unassuming, honest and real. When Grayson writes, even about writing, it sounds like Grayson rather than defensive posturing.

#### IV.

Some law students lay claim to being a writer. They neither hate writing nor shy away from telling the world they are writers. When asked to write they do it with relish. In contrast to colleagues who fear or hate to write, or like Grayson, who have honest doubts and secret hopes for themselves as writers, consider Rachel.

—Rachel—

Rachel is quite full of herself as a writer, fully convinced that her writing is not only adequate but is a highly developed skill that will make her a successful law student. She makes perfectly clear that she does not see herself as a dutiful student/soldier for she is convinced she is a real writer.

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 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.

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.

When I am writing a letter I display warmth, concern, caring, sharing, inquisitiveness, honesty, a bit of silliness, and occasionally, confrontational.

When I am writing a memo, I am tactful, informative, sensitive to the issues and the audience, prepared, occasionally light-hearted and kind.

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.

No one need remind Rachel that writing is related to who we are or who we have set out to be. Rachel, unlike her colleagues who have put writing at arms-length, takes the opposite 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. I risk myself in my life. Sometimes my writing falls flat on its face. Well, sometimes, so do I. So what?"

Rachel had no trouble reflecting on the "voice" she found in her writing as she was fully convinced she knew exactly what "voice" was, when it was "most resonant," and that she knew when it was absent, and if absent, why. And there was even a hint of insight peaking through her immodesty, when she confirmed that her voice was "[a] bit all knowing." Rachel says, "I want my writing to be intimately connected with my person. I want my writing to have impact." No, Rachel was not modest about herself as a writer. She had image enough for all of us!

Shortly after writing these words about the intimate connection she knew to exist between person and writing, Rachel dropped the course. I assume that she did so to seek out a teacher who would not confront or challenge her abilities and all-knowing writer *persona*. Rachel may have been the writer she claimed to be, but she wasn't about to put herself in a position to find out.

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For every law student who finds herself in a sea of doubt and self-loathing about writing, there are students like Rachel who are convinced they are exactly the writers they want to be.

—Curtis—

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.

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.

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.

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....

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 as a writer, and about having used his writing skills to get a job. There is, when Curtis talks about finding a place where he and the writing can "rest together" a sense he might actually be a writer. And certainly, the pledge to work to learn more about writing is commendable and appealing. Yet, suspicion lingers. With Curtis, like Rachel, there is much bravado and, one soon finds, posturing. With both Rachel and Curtis, the question is whether there is anything of substance (and what that substance might be) beyond the bravado.

Some two weeks before this extraordinary declaration of the writing life, Curtis had (contrary to instructions in the course syllabus) handed in a hastily scribbled handwritten note 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.

First, I have trouble deciding which ideas is 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?

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!

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, in the two weeks that elapsed from late August until early September, seems to have invented a *persona*, a mask that reflected a confident, self-assured, careful 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 a love of creative writing, for which she "won some awards in junior high school." She talks about being a reader, a reader who fantasizes writing like Stephen King, her favorite author, who "express[es] thoughts that we all have but would never put into writing." Deborah praises King for his 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 seeks in writing, an 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 some awards, to be considered a talent, to avoid the experience of fear so common to her col-

leagues, and good enough to be “easily understood.” But with Deborah there is also some wishful, magical thinking about the use of words to “make” others feel the way she wants them to feel.

—Wilson—

Wilson, another confident student, considers himself a good enough writer that he is disappointed in being asked to write about himself as a writer. He wrote, bluntly, that he wasn't excited about 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 searching and critical. Wilson was informed that the writing felt “strained” and was laden with “forced humor.”) When asked to comment on the reaction to his writing, Wilson claimed to have nothing to say. More problematic than the literary cat and mouse game he wanted to play, Wilson's writing was an example of the one hand not knowing what the other might do. His writing was riddled with contradictions, virtually every affirmative statement undermined and undone by another that would follow it. Wilson claimed not to see these contradictions. Indeed, his inability to confront conflict was also found in his rationalizing the serious difference between his self-assessment of his writing and that of his teacher, a difference he called an “enigma.” Wilson thought his writing would be “spoiled” by thinking more deeply 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 compares himself and his situation as a writer to Robin Williams, the comedian.

[Robin] Williams seems frightened or reluctant to let others see his true self. He cannot be serious enough, even for a moment, to respond to a straightforward, personal question. Is he hiding something, or the lack thereof? Is he merely what he appears, and nothing more?

Wilson puzzles over Williams' comedic *persona* and its possible relation to a real Robin Williams, an off-stage self, and sees in Williams' situation a parallel to his own as a writer. Asked to write about himself as a writer, reflect on what he has written, and his response to a critique of his writing, he found it “extremely difficult,” but admitted it “stimulated a great deal of thought.” He was startled to find himself in “a maze of contradiction.” And yes, being asked to write about himself made him defensive, he says, 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 which he will hone as a law student and future lawyer.

Wilson describes his difficulty in writing about himself this way:

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 is strongly 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, adopts whatever voice seems dictated by 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 could play, in writing, a man of protean possibility, he could enjoy writing. The enjoyment is related to an appreciation for the power of writing "to please, affect, motivate, challenge, teach and persuade others."

Wilson seems to take the power of language seriously enough to have pursued "vocabulary building books" to improve his reading and writing. He admits to being "intrigued by the possibility of becoming a better writer" so long as he can do so "without a brain transplant."

Wilson so much wants to see himself a writer he willingly adapts himself and his writing to his audience, but he realizes 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 since his

writing self is so thoroughly instrumental and adaptive. For example, he characterizes his present writing in a job outside the law school (which consists of memos, business letters, and reports) as a situation 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 a voice—his own—that might carry from one writing to another, he concludes that “voice” is just the style or form of the writing. Wilson relates writing “voice” to the situation, not to himself as a writer. Wilson agrees with Peter Elbow that getting “voice” into one’s writing is important, but what could “voice” mean if every “style” of writing demands a particular voice? 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, I found 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 could not imagine that his writing and the postures he had assumed as a writer, would not suffice as a law student. (I can just hear Wilson say, out of the teacher’s watchful presence: “Surely, with all this writing, whatever kind of writer I am, will be good enough here.”) Confronted by a critical reader, he claims to be as good as he wants or needs to be:

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 found questions posed about his writing “insidious,” “posed ever-so delicately in lamb’s clothing.” Having a critical reader for his writing has, he says,

placed me in a quandary. Do I damn the torpedoes, through 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? He must use his writing to push the old "crap" or be honest and sincere. Honesty is not particularly attractive, associated as it is with blandness and "looming icebergs."

Wilson went on to reveal that he had a background in both journalism and literature. With this education he fancies himself as one "who can recognize and appreciate good writing, as well as correct bad writing, without necessarily having the talent to produce good writing myself." Wilson is something of a sophist; he lays claim to being a writer, having been educated to write, but not willing to promise he can produce writing of merit. Wilson has created a cover story of a self-assured writer, but there is a cost to be paid to preserve a facade, even a secure one. Wilson must continually reassure himself that his writing is as good as he wants it to be. He imagines having a "certificate" that proves he is a writer. But then the feared truth sets in and he reports being in a situation where he can't lay hands on the certificate and the relief which it would entitle him.

Wilson describes his teacher/critic as a "doubting Thomas." Yet, he admits he is on "thin ice" in his rhetorical efforts to convince anyone he is in reality a "great word-spinner." In the play of bravado, conflict, and ambivalence, he wants to convince the teacher he will opt for honesty and sincerity and "cut the crap." He says, "[a]s the clock is ticking, and mortals are finite, and I am a mortal, I shall have to opt for [honesty and sincerity]." But his inflated rhetoric is undermined by the 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 many of his statements, is not allowed to stand. He goes on to contradict himself: "My background in literature and journalism has afforded many opportunities to write and I do enjoy it." Wilson seems both delighted and oblivious to the way his every statement, claim, and stance is undermined by words, by his failure to know that his posturing and sophomoric dalliances are all obvious to the reader.

I will leave Wilson, as he left his reader, with a concluding contradiction: "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." Wilson, fearless to a fault, claims to be insecure, but only if we are all sufferers of the condition.

## V.

We have seen, in students writing about themselves as writers, fear and loathing, anxiety about one's skills and talents, and in some, a kind of overplayed confidence that all is well. There is still another orientation to writing, and that is the use of writing as therapy. Some of the baggage students carry with them into writing is neither negatively charged or disempowering.

## —Tamera—

Tamera represents this therapeutic approach to writing when she refers to her past writing as a kind of "salvation."

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.

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.

Tamera has discovered the therapy of language<sup>12</sup> and holds out the possibility 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

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<sup>12</sup> When invited to engage in introspective writing, law students frequently comment on the therapeutic or healing aspect of writing. See James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 *Willamette L. Rev.* 45 (1993).

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 lacking when she speaks. She claims that writing has 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 ever learn of these positive feelings toward writing and attempt to develop them? And if they do not, what will happen to those empowering images of writing as a source of energy and hope?

## VI.

Rare in law student writers is the sense that writing can, in itself, constitute a source of enjoyment.

—Vince—

I enjoy the thrill of writing. I especially appreciate opportunities to release my inhibitions and indulge in creative writing. I write poetry, songs (words and music), creative short stories, research papers, book reviews and critical essays. In all my writing I try to maintain structure, form and originality.

Unlike Wilson who found the critique of his writing “insidious,” Vince accepts the possibility that he has room to grow as a writer.

My writing is not the epitome of grammatical excellence. Problems, such as spelling, punctuation and impatience with elaborate phrasing, plague my writing. For these reasons, it is hard for me to consider myself a writer. Although I attempt succinct, deliberate and understandable writing, the poor grades I receive do not reflect the effort and thought I dedicate to my work. I realize I have room for growth.

\* \* \*

A super-writer I will probably never be, but I can certainly try to improve my writing skills.

—Sherri—

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."

Writing exhilarates me. Even the grueling times, when I am writing on a subject that does not interest me or doing business correspondence where I know every word will be scrutinized, I still find challenging. Anxiety builds when I write, not to the point where I am overcome or disabled, but enough to keep me pushing to write my best.

## VII.

Each student brings a certain amount of "baggage" with them to legal writing. Or as Henriette Anne Klauser puts it in *Writing on Both Sides of the Brain*, we have tapes playing in our head about ourselves as writers.<sup>13</sup> Law students are already writers, more or less, and this means they are carrying the baggage (and knowledge) of their experience of writing into the writing they will do as lawyers. They have images of themselves as writers and these images bear down on them, take up space, and create problems when they are asked to write like lawyers. Students come to the new (old) writing situation, the writing they will learn as lawyers, with all sorts of notions, ideals, beliefs, values, sentiments, feelings, fears, anxieties. Much of this baggage is accessible, some of it is not. Some of it is incapacitating, some of it necessary illusion. Most striking is the strongly negative sense in which the students (or at least the small sample I have used to map out these concerns) experience themselves as writers.

The baggage that students bring with them to legal writing makes them procrastinators and perfectionists, plodders and thinkers, resentful and eager, fearful and courageous. These various stances, images and psychologies, "infect" legal writing and become part of the pathology we associate with legalese. We see in the twisted, misshaped and defensive language used to frame legal arguments, all manner of fears and hopes, hubris and shame, anxiety and numbness, vulnerability and denial, all the kind of defense mechanisms students use to survive when they are embattled as writers.<sup>14</sup> There is no firewall to separate

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<sup>13</sup> Henriette Anne Klauser, *WRITING ON BOTH SIDES OF THE BRAIN* 8 (San Francisco: Harper & Row, Perennial Library, 1986).

<sup>14</sup> I should alert the reader that I have not set out here to "prove" the claim that legal writing is psychologically transparent so much as to alert those interested in legal writing

the student's image of herself as writer and the legal writing she produces.

I think it a great folly (as well as convenient) to assume that when we teach legal writing we engage in an instrumental and "technical" enterprise which exists separate and apart from whatever misshaped images of a writing self a student brings with her to law school. The impressions and images of one's self as a writer that accompany the student to law school are found in the student's approach to the work of writing, and in her judgment about the quality of the work (how her writing works and how it fails). She already knows what kind of writer she is *and* what she knows can be a mistake. She knows because she has written for teachers who have responded to her writing. She has placed trust in the judgments of some teachers and rejected the judgments of others (a process that will be repeated in law school). And now she is in law school being asked to write legal memoranda and briefs, case notes for the law review, and essay examination questions; she is being asked to be a writer, a demand which must be superimposed on images already in place. There is in this process of identification as writer the possibility of real knowledge and serious mistakes.

\* \* \*

Law students sent into legal writing, like the soldiers Tim O'Brien memorializes in his fiction, "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...."<sup>15</sup> In legal writing students have gone to battle, with themselves, and with an enemy they are not asked to name, see, or understand. Legal writing, for many students, is war of the kind O'Brien describes, "a kind of emptiness, a dullness of desire and intellect and conscience and hope and human sensibility."<sup>16</sup> In legal writing, there are plenty of soldiers, Army "grunts," who have

no sense of strategy or mission. They search[ed] 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.<sup>17</sup>

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of a pedagogically interesting linkage between person and writing ("baggage" and skill), that we tend to ignore in the teaching of legal writing.

<sup>15</sup> O'Brien, *supra* note 1, at 15.

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

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

The pressures are enormous; law students carry on. The students whose commentaries are explored here were all survivors of their first year of legal education. They had humped from village to village, course to course, carrying "all they could bear and then some..."<sup>18</sup> They felt the pressure, worked it off, or worked through it, or self-medicated so they would not feel it, or were just numb to it all. "They carried their own lives" and it sometimes felt like it was more than they could bear.<sup>19</sup> "Some carried themselves with a sort of wistful resignation, others with pride or stiff soldierly discipline or good humor or macho zeal. They were afraid of dying but they were even more afraid to show it."<sup>20</sup> And yes, "there were times of panic, when they squealed or wanted to squeal but couldn't, when they twitched and make 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..."<sup>21</sup>

If law is war, it will be the rare person who can embrace it and love it. There is much to dislike in legal education and while students put up a game-face, adopt a survivalist rhetoric, and hump from course to course, doctrine to doctrine, village to village, they are often less than ecstatic about what they are doing, ever hopeful about getting through and getting on with their lives. They hump on because they assume that the Good Life will catch up with them. If they can survive legal writing (and the disempowering images they carry into it) then surely, one wants to believe, something worthwhile lies ahead, somewhere out there, beyond law school and legal writing. In law school and in legal writing, students try to be good soldiers.

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<sup>18</sup> Id. at 9.

<sup>19</sup> Id. at 15.

<sup>20</sup> Id. at 19.

<sup>21</sup> Id. at 18.



**APPENDIX****A LEGAL WRITING DIAGNOSTICS**

Legal educators are constantly fussing with (and writing about) legal writing programs because they know first hand how badly students write. Any truthful story of legal writing<sup>1</sup> will be laced with worried teachers, anxious that their students do poorly what it is so essential for them to do well. We worry about legal writing because it has been diagnosed as having near lethal pathologies. Richard Wydick, long-time student of legal writing, observes:

We lawyers cannot write plain English. We use eight words to say what could be said in two. We use old, arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause, within clause, glazing the eyes and numbing the minds our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is: "(1) wordy, (2) unclear, (3) pompous, and (4) dull."<sup>2</sup>

As painful and difficult as it may be, we need to start looking at our writing with a critical eye. One reason we need to be critical about writing is that we smother our best thoughts in verbiage. Extra words, unnecessary phrases, and bogus paragraphs creep into our writing like gremlins. It is the rare person among us who does not suffer from the problem. (We should, however, recognize that not all writing suffers from this problem and it would be a mistake to pare, cut, and hack around on words and sentences that are full of energy and do their work. Revision of good, strong writing will simply taint the writing with new set of problems.)

We are too verbose. We use too many words. We employ extra, unnecessary phrases. Much of the editing I do on my own work, the work of colleagues (I edit the journal in which this article appears), and on student papers, is attacking unneeded words. These unneeded words are like weeds. We need to get in the habit of getting the weeds out of the words we want to cultivate.

Wydick, the writing guru, tells the following story:

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<sup>1</sup> For an attempt to see law school efforts at legal writing pedagogy as a "story," see James R. Elkins, *What Kind of Story is Legal Writing?* 20 *Legal Stud. F.* 95 (1996).

<sup>2</sup> Richard Wydick, *PLAIN ENGLISH FOR LAWYERS* 3 (Durham: Carolina Academic Press, 1970).

As a beginning lawyer, I was assigned to assist an older man, a business litigator. He hated verbosity. When I would bring him what I thought was a finished piece of writing, he would read it quickly and take out his pen. As I watched over his shoulder, he would strike out whole lines, turn clauses into phrases, and turn phrases into single words. One day at lunch I asked him how he did it. He shrugged and said: "It's not hard—just omit the surplus words."<sup>3</sup>

Wydick contends that there are two kinds of words in a sentence, working words and glue words. "The working words carry the meaning of the sentence."<sup>4</sup> All the other words of a sentence are glue words. "[W]hen you find too many glue words, it is a sign that the sentence is badly constructed. A good sentence is like fine cabinetwork: the pieces are cut and shaped to fit together with scarcely any glue. When you find too many glue words in a sentence, take it apart and reshape the pieces to fit tighter."<sup>5</sup>

I found the following sentence in a student paper. The sentence reads: "Mary's writing impressed me with its ability to be passive yet angry." This sentence attracts attention when we think about Wydick's notion of *working words* and *glue words* and how we get too much of the later and not enough of the former. By focusing on the working words I edit the sentence to read: "Mary's writing impressed me as passive yet angry." The phrase—"with its ability"—is not doing any work in the sentence. The sentence is more focused and gains a bit of punch when the extraneous glue words are extracted.

It is not just a problem with too many words in a sentence but extraneous sentences strung out before us like Christmas tree lights. Consider the following paragraph:

As a first-year law student you face a lot of fears. Probably the most notable, however, is the fear of not knowing what to expect from different professors in each of your classes. There are so many questions you have as you prepare for the first day and for each successive day thereafter. *Should I brief each case or just learn the rule of law?* Does the professor take volunteers only or does he call on people? And, what system does he use when selecting whom to call upon—a random or some systematic method? And, after I've been called upon am I safe until he calls on everyone else at least once?

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<sup>3</sup> *Id.* at 7.

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

<sup>5</sup> *Id.*

While the “over preparation” that you may do to be safe from sounding dumb and unprepared can be an integral part of learning about law and what is expected in a legal career, it would be helpful to know from a student’s perspective what they “wished they had known before beginning the class” that would have better prepared them for Contracts I.

My edited version of this paragraph reads:

As a first-year student you face the fear of not knowing what to expect. Should I brief each case or just learn the rule of law? Will the professor call on me? Some of us ‘over prepare’ to be safe from sounding dumb? In telling you something about the course and its teacher I hope to help you confront the fear of not knowing and avoid the problem of over-preparation.

I don’t mind meandering but the original paragraph doesn’t have enough “bit” to suit me. (There is an additional problem in that the paragraph is the “lead” paragraph.) In all honesty, the paragraph is boring. It takes up matters that anyone who has been a student in law school for two days will know something about and on which they will have strong opinions. When we write about matters that both the writer and the reader already know a great deal about, there is strong chance of boring both yourself and the reader.

The edited version of the paragraph uses the writer’s idea of fear but gives it more focus by talking about a fear that I assume we are all likely to have and admit having—a fear of the unknown. I am not willing to assume, as did the writer in the original version, that all first-year law students “face a lot of fears.” Many students are fearless, unfazed, and unchallenged by their law school experience. Some of us have a lot of fears and others don’t seem to have so many at all. What about those who have fears that they are unwilling to confront, displaced fears, ignored fears (can a fear ever be ignored)? What about those who have fears but don’t want to talk about them? Fears that make them unproductive, unfriendly? There is something to be said about fear in legal education, but it is hard to capture this fear in the assertion, “As a first-year law student you face a lot of fears.”

When I revise this paragraph I want to see if I can pull even the most fearless into the ambit of the writing. The reader may not see herself as having a lot of fears, but may identify with or experience a fear of the unknown, the fear that comes from not knowing what to expect.

I have retained the sentence from the original that reads: “Should I brief each case or just learn the rule of law?” This is a good working

sentence. The question is pragmatic and will appeal to those who want concrete, specific information in their introduction to a course (the writing exercise invited students to “introduce” their successors in legal education to a particular course), but it also hints at broader philosophical problems. There is more than one way to learn. And can anyone *just* learn rules of law? I like the question because it expresses a conflict and sets up a *tension* in the writing and for the reader. The tension may or may not be the subject of the writing to follow. The writer may or not return to the question, but even if she does not, the question stands on its own bottom.

Of the many annoyances we subject our readers the most easily corrected is the use of crutch words. No writing is going to be fatally flawed by the appearance of some useful words, but there are particular words that feel like nettles to the skin. An example is the word “very.” Overuse of the word “the” is another.

Some word crutches point to ambivalence and unwillingness to make a definitive statement, even when we have something definitive in mind. For example, “maybe” and “some” make frequent appearances in student writing, and seldom belong where they are used. We want to be cautious and qualify. We want to be accurate. We don’t want to say people, when it is actually some people that we have in mind. For example, we might want to talk about bigoted people and say, “Some people are bigoted...” We know that all people are not bigoted so we qualify the statement for the purpose of accuracy. And yet, there are more direct, less “qualified” ways to say what we want to say accurately. For example, we might say, “Bigoted people frighten me.” I prefer this way of putting the notion than, “Some people are bigoted and they frighten me.”

Consider whether you want to serve up to the reader the equivalent of a McDonald’s hamburger. Know what you are asking your reader to consume in your writing. There are ways to escape boredom in writing. Consider the following:

Push yourself beyond when you think you are done with what you have to say. Go a little further. Sometimes when you think you are done, it is just the edge of beginning. Probably that’s why we decide we’re done. It’s getting too scary. We are down onto something real. It is beyond the point when you think you are done that often something strong comes out.<sup>6</sup>

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<sup>6</sup> Natalie Goldberg, *WRITING DOWN THE BONES: FREEING THE WRITER WITHIN* 103 (Boston: Shambala, 1986).

A diagnostic perspective on writing puts the pathology even more bluntly: "We learned to spew out poorly written judicial fluff, endless legislative goo, brow-wrinkling regulatory ooze, and mounds of words posing as sentences."<sup>7</sup> C. Edward Good focuses on grammar and analogizes it to rules of law. "To become a better legal writer, you must know enough grammar and the right kind of grammar."<sup>8</sup> If good writing is the goal, some authors of legal writing texts, would shift the focus away from grammar.<sup>9</sup> We lawyers have been indicted<sup>10</sup> and diagnosed as having little knowledge of basic grammar, an inability to say things simply and directly, lack of judgment, and inability to tell a basic story.<sup>11</sup>

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<sup>7</sup> C. Edward Good, *MIGHTIER THAN THE SWORD: POWERFUL WRITING IN THE LEGAL PROFESSION* xx (Charlottesville, Virginia: Blue Jeans Press, 1989).

<sup>8</sup> *Id.* at 7.

<sup>9</sup> See e.g., Tom Goldstein and Jethro K. Lieberman, *THE LAWYER'S GUIDE TO WRITING WELL* 9 (Berkeley: University of California Press, 1989) ("Good writing is more than adherence to elementary rules of usage." Goldstein and Lieberman make clear that writing is also an "art." *Id.* at 10).

<sup>10</sup> Our writing seems to have been a rather long-standing sore point in the profession, so troublesome to the lay public and politicians that they have turned to the government to mandate that we lawyers write in "plain English." The assumption is that it will take acts of law to compel us to write to be understood, to produce documents and texts accessible to clients and lay readers.

<sup>11</sup> See Goldstein and Lieberman, *supra* note 9, at 3-4, 27.

## Appendix

### TEACHING LAWYERS TO WRITE: A CHRONOLOGICAL BIBLIOGRAPHY

For the past fifty years legal educators have written about legal writing “programs” and their pedagogical concerns about the quality of legal writing. Yet, we have barely scratched the surface of the real problem in our institutional efforts to improve legal writing—the person who does the writing. In the chronological history of law teachers writing about legal writing, there is only in recent years a hint that our instrumental views about the pedagogy of legal writing may now begin to recognize the concerns raised in this Essay.<sup>1</sup>

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<sup>1</sup> See generally, *The New Legal Writing Scholarship*, 20 Legal Stud. F. 1-174 (1996)(Philip Meyer, ed.).

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