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Lucille A. Jewel[*]

Abstract

In legal education, the word "doctrinal" is most often used to refer to courses such as Contracts, Torts, Property, and Criminal Procedure. Doctrinal has long been used as a descriptive adjective, but also as a word of exclusion. We often hear legal writing courses are not substantive and not as significant as doctrinal courses. Linda Edwards's new book, *Readings in Persuasion: Briefs that Changed the World*, persuasively challenges this view.

This Article evaluates what we mean when we use the term doctrinal in a legal education context and considers six powerful descriptors for the doctrine of legal writing, all extrapolated from Edwards's book: (1) legal writing is founded upon a collective body of robust scholarship; (2) it relies upon principles of science to create legal meaning; (3) it embraces an artistic craft model for the production of legal meanings, emphasizing the creativity, autonomy, and discretion that form the core of a lawyer's professional identity; (4) it involves critical introspection, opening up areas of thought traditionally obscured in legal education and ensuring that law students appreciate the power they will eventually wield in law practice; (5) it is substantive because legal writing is law making—we cannot separate the substance of the law from the words we use to forge legal meanings; and finally, (6) because it relies on real cases and context to teach students how to engage with the legal process, the doctrine of legal writing builds and improves upon law school's classic case-method pedagogy.

Introduction

In legal education, the word "doctrinal" is most often used to refer to core law courses such as Contracts, Torts, Property, and Criminal Proce-

[*]Associate Professor of Law, University of Tennessee College of Law. I am grateful to Professor Elizabeth Megale for putting this conference together and for inviting me to participate. I would also like to thank my fellow Symposium panelists, Christopher Rideout, Kenneth Chestek, Teri McMurtry-Chubb, and Linda Edwards. It was a great honor to be part of such a vibrant and engaging conversation on the substance of legal writing. I would especially like to thank Linda Edwards, the subject of this piece, for being such a mentor and example to me. Thanks also to the inaugural student editors of the *Savannah Law Review* and to Faculty Advisor Professor Caprice Roberts. Finally, much appreciation to Associate Dean Rose Anne Nespica (and Audrey the cat) for the hospitality in Savannah.

dure.[1] Doctrinal has long been used as a descriptive adjective, but also as a word of exclusion; we often hear that legal writing courses are not substantive and are not as significant as doctrinal courses.[2] Linda Edwards's new book, *Readings in Persuasion*: *Briefs that Changed the World*,[3] challenges this view.[4] Undergirded by Edwards's book, this Article argues that legal writing should be considered a substantive, *doctrinal* course.

Before I address my thesis that legal writing should be considered a doctrinal course, which is sure to generate some dissensus, let us consider what we mean when we use the label "doctrinal"[5] in legal education. To a certain extent, we may be using an overly narrow definition of doctrinal to describe certain aspects of the law school curriculum.

As used in the context of legal education, doctrinal often takes on a meaning that embraces a formalist approach to legal analysis. When law professors use the term to refer to a course like Contracts, they are usually referring to a specific legal doctrine—"[t]hat which is taught or laid down as true concerning a particular subject or department of knowledge . . . a belief, theoretical opinion; a dogma, tenet."[6] We might say that doctrine takes on a dogmatic connotation, implying certainty in the law, the idea that one can arrive at the singular "correct" understanding of

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[1] David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. Kan. L. Rev. 105, 106 (2003) (defining Contracts, Torts, Property, and Criminal Procedure as "traditional doctrinal courses"); Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 New Eng. L. Rev. 883, 883-84 (1994) (stating Torts, Contracts, Criminal Law, and Civil Procedure are traditionally touted as law school's most "heroic" core courses).

[2] Romantz, *supra* note 1, at 106-07; Sossin, *supra* note 1, at 883-84.

[3] Linda H. Edwards, Readings in Persuasion: Briefs That Changed The World (2012) [hereinafter Edwards, Readings in Persuasion].

[4] As a personal anecdote, I must explain what a tremendous influence this piece has had on my professional development as a teacher and scholar. I stumbled upon this chapter in my first year of teaching law. After I read it, I began to discard the professional identity that my institution had imposed upon me—the idea that I merely taught technical composition and corrected student papers. I started to construct a professional identity for myself as a teacher who pushes students to think hard, grapple with doctrine, and figure out how to manipulate the law in the most sophisticated ways—all with the goal of producing compelling work product. In addition to helping me construct a forward-looking professional identity, this chapter also ignited the associative connections that propelled me to start writing scholarship that touched on critical legal theory, hierarchy, legal culture, and legal rhetoric.

[5] In this Article, I use the noun "doctrine" and the adjective "doctrinal" interchangeably.

[6] The Oxford English Dictionary, *Doctrine Definition 2(b)* 916, (2d ed. (1991)).

a particular body of legal knowledge.[7] This understanding of doctrine is thus closely aligned with a formalistic approach to law, the idea that "moral and legal reasoning [is simply the] application of literally-defined objective categories to situations in an all-or-nothing fashion, based on fixed criteria."[8]

The doctrinal concept also encompasses a religion metaphor, with the law professor playing the role of a preacher, using incisive Socratic questioning to shepherd students to the "correct" legal analyses.[9] Conjuring up this particular metaphor for legal education—of the law professor as preacher—draws an analogy to worship practices of the Puritans in early America, where the minister conveyed "the Word" from a raised pulpit, decorated with "an enormous, carefully painted, staring eye, a terrible and suggestive illustration to youthful wrongdoers."[10] The preacher, or minister in Puritan culture, was considered "an ambassador from the great Sovereign of the universe"[11] whose lectures contained no room for pluralist perspectives.[12] In developing this metaphor, I do not mean to imply that all preachers and ministers proceed in such a top-down manner. In other religious contexts, preachers deliver sermons in a more open-ended style, engaging listeners with a series of questions to

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[7] For instance, early descriptions of the case-method posited that the most intelligent law students would be able to wrestle with seemingly disparate cases to distill the "correct" law to apply in a given case. *See* W. Burlette Carter, *Reconstructing Langdell*, 32 Ga. L. Rev. 1, 83-84 (1997). Asserting there is a single correct answer in legal analysis relies on the premise that legal analysis is merely the "application of rules to facts with a right answer presumed [and that all] the competent practitioner [needs to do is] 'connect category to case.'"; Gerald P. Lopez, *Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. Va. L. Rev. 305, 322 (1989).

[8] Mark L. Johnson, *Mind, Metaphor, and Law*, 58 Mercer L. Rev. 845 (2007), *as reprinted in* Edwards, *supra* note 3, at 233.

[9] *See* Elizabeth Mertz, The Language of Law School: Learning to "Think Like A Lawyer" 51 (2007) (describing the method in which law students listen to the "preaching" of their professors and then, in response to the professor's questions, repeat back "the Word" of the professor).

[10] Alice Morse Earle, The Sabbath in Puritan New England 8 (Aertena Publishing 2010) (1891), *quoted in* David Hackett Fisher, Albion's Seed: Four British Folkways in America 118 (1989).

[11] Harriet Beecher Stowe, Oldtown Folks (1869), *reprinted in* Harriet Beecher Stowe, Three Novels: Uncle Tom's Cabin; or Life Among the Lowly; The Minister's Wooing; Oldtown Folks 877, 940 (1982) *quoted in* Fisher, *supra* note 10, at 120.

[12] *See* Fisher, *supra* note 10, at 24 (explaining how the Puritan concept of the Word, conveyed by ministers via the meetinghouse lecture, connoted an "absolute authority."); Stowe, *supra* note 11, at 1251 (describing one Puritan minister as "making it clear to those who heard him that there was no choice between believing his hard doctrines and giving up the Bible altogether").

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consider, but with no set answers.[13] Similar to an orthodox approach to religious texts, abstracted appellate opinions—the reading materials in the traditional law school classroom—tend to produce narrow and constrained legal meanings. Traditional legal education's reliance on laconic appellate opinions as its canonical texts has been described as excluding all of the messy realities that spring from "everyday life,"[14] and unrealistically presenting legal knowledge as "doctrine in a vacuum."[15] When appellate judicial authors and casebook editors carefully excise contextual facts from the case, they cloak the text with authority by cultivating the style of an "oracle . . . voicing the dictates of a vague divinity."[16] In this metaphor for traditional legal education, the law professor as preacher strictly controls the presentation of a narrow universe of case materials to produce a unitary "correct" view of the law, the law as the Word.

Legal doctrine as orthodoxy rests on an impoverished conception of legal knowledge and law practice. Legal knowledge is "not an abstract system or scheme of rules" but is instead an "inherently unstable structure of thought and expression . . . built upon a distinct set of dynamic and dialogic tensions."[17] Competent law practice cannot be reduced to the technical application of a category to a determinate set of facts.

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[13] *See, e.g.*, James Boyd White, Connecting to the Gospel, Texts, Sermons, Commentaries (2010) [hereinafter White, Connecting to the Gospel]. In addition to his influence as a legal thinker, Professor White is a lay preacher in the Episcopal Church. In his sermons, Professor White approaches biblical texts with the same dynamic inquisitiveness that he brings to his analysis of contemporary legal problems. Jack L. Sammons, Mercer Law Professor, comments on White's book, stating that "[t]he theology at work in these readings is never argued; it is just offered." Jack L. Sammons, *Being There: James Boyd White's Biblical Hermaneutics*, Amazon, http://goo.gl/7ctijZ (reviewing White, Connecting to the Gospel (March 28, 2010)).

[14] Lopez, *supra* note 7, at 336 ("Make anyone read, talk about, and deploy too many appellate cases, they say, and you'll see them inevitably move away from everyday life—away from detail, away from context, and away from passion.").

[15] James Boyd White, *Doctrine in a Vacuum: Reflections on What A Law School Ought (and Ought Not) to Be*, 36 J. Legal Educ. 156, 159 (1986) [hereinafter White, *Doctrine in a Vacuum*] ("The focus on discrete texts and the chain of texts . . . thus becomes a focus on doctrine in a vacuum.").

[16] John T. Noonan, Jr., Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks 140 (2002) (citation omitted) (quoting Judge Learned Hand's description of Judge Cardozo's writing style).

[17] James Boyd White, *An Old Fashioned View of the Nature of Law*, 12 Theoretical Inquiries L. 381 (2011), *as reprinted in* Edwards, *supra* note 3, at 325 [hereinafter White, *An Old Fashioned View of the Nature of Law*].

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Rather, law practice is an empowering art form[18] requiring an intensive engagement with:

> the dynamics of inevitably working *with* other people in framing and responding to conflicting, uncertain[,] and unique situations; the interaction of lay and professional understanding and know-how; the influence of cultural and cognitive forces on problem-solving; and the impact of income and other power disparities on perceptions and strategies.[19]

Finally, a comparison can be made between religious metaphor and legal doctrine, which ultimately denies autonomy and individuality to future law practitioners. Law students ought not be infantilized as sitting in pews and passively receiving knowledge imparted from the professor on high. Rather, as professors, we should celebrate the legal classroom as a space where *law is made*.[20] The top-down vision of the doctrinal professor as priest imparting legal rules denies the boundless promise of legal education to open up students "[to] the ethical and intellectual possibilities of the lawyer's life . . . far more interesting, challenging, and ethically alive, than the view of the lawyer as rule-applier."[21]

After considering these connotations for the word doctrinal, I am not certain that doctrinal is an accurate term for any aspect of legal education. However, legal writing has long been caught up in a false dichotomy between substantive doctrine and skill,[22] also characterized as a division between theory and practice.[23] In debunking the false premise that legal writing is non-substantive because it focuses exclusively on technical mastery, Mary Beth Beazely states it best: "Legal writing is not focused on grammar any more than tax law is focused on math."[24] Substance and skill necessarily merge together in any legal writing class. Legal writing professors teach analytical skills in the context of substantive law, incorporating civil procedure, modes of legal reasoning, common law rule synthesis, statutory rule construction, policy arguments, and professional

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[18] EDWARDS, *supra* note 3, at 341-42 (excerpting White, *An Old Fashioned View of the Nature of the Law*, *supra* note 17).

[19] Lopez, *supra* note 7, at 322.

[20] White, *Doctrine in a Vacuum*, *supra* note 15, at 162. James Boyd White states that when a student applies and considers the law, he is actually making law in the classroom. Hence, "[a] good law school is thus a school of law-making."

[21] EDWARDS, *supra* note 3, at 402 (excerpting White, *An Old Fashioned View of the Nature of Law*, *supra* note 17).

[22] J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 45 (1994) (describing the substance-skills dichotomy, with legal writing courses maligned as non-substantive).

[23] Romantz, *supra* note 1, at 126.

[24] Mary Beth Beazley, *Riddikulus! Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 7 SCRIBES J. LEG. WRITING 79, 81 (2000).

ethics.[25] Thus, legal writing inhabits both the realm of substance and skill, theory and practice, revealing that the mutually exclusive dichotomy between doctrine and writing is false.[26] Because the doctrinal appellation operates as a term of exclusion that cements one of legal education's most harmful hierarchies,[27] legal skills teachers might use the term doctrinal as a rhetorical strategy to attack this false dichotomy. However, establishing legal writing as a doctrine might require that we adopt a broader meaning than the formalistic and religious connotation commonly associated with the term in the legal education context. "That which is taught" is a broader, but still accurate, definition of doctrine.[28] Etymologically, the word doctrine derives from the Latin word *doctrina*[29] (teaching and learning) and *doctor* (teacher).[30] When we consider doctrine's original connotation focused on teaching and learning, then doctrinal appropriately describes what legal educators do. Taking this broader and more accurate definition of doctrine, let us use Linda Edwards's book as our reference guide to further define the doctrine of legal writing. What exactly is the doctrine of legal writing?

As the following sections set forth, six powerful descriptors for the doctrine of legal writing, all can be extrapolated from Edwards's book: (1) the doctrine of legal writing is founded upon a collective body of robust scholarship; (2) it relies upon principles of science to propel us to a greater understanding of how to best create legal meanings; (3) it embraces an artistic craft model for the production of legal meanings, emphasizing the creativity, autonomy, and discretion that form the core of a lawyer's professional identity; (4) it necessarily involves a certain amount of critical introspection, opening up areas of thought that are traditionally obscured in legal education and ensuring that law learners appreciate the power that they will eventually wield in law practice; (5) it is substantive because legal writing is law making—we cannot separate the substance of the law from the words we use to forge legal meanings; and finally, (6) because it relies on real cases and context to teach students how to engage with the legal process, the doctrine of legal writing builds and improves

[25] Beazley, *supra* note 24, at 81; Romantz, *supra* note 1, at 138.

[26] Sossin, *supra* note 1, at 890.

[27] I am referring to the status hierarchy that elevates casebook faculty over faculty who teach legal skills. *See* Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ALWD 12, 13-15 (2002) (explaining that legal writing faculty occupy the bottom rung of the law professoriate's occupational hierarchy); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. Rev. 467, 468 (2004) (explaining that the division between doctrinal and legal writing professors is an elitist and institutionalized status system).

[28] The Oxford English Dictionary, *supra* note 6.

[29] Junior Classic Latin Dictionary 37 (1944).

[30] *Id.*

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upon law school's classic case-method pedagogy.

Legal Writing Doctrine is Founded Upon a Robust Body of Scholarship

Professor Edwards dedicates her book "[t]o the scholars whose work is represented here and to those on whose shoulders they stand."[31] The dedication is a fitting beginning to the book, which is organized in two parts. Part One of the book contains over forty excerpts of scholarly articles, many penned by legal writing professors, addressing the art and science of successful legal communication. Part Two contains contextual essays meant to be read in tandem with a series of briefs that successfully broke new ground in the law-making process.[32] The excerpts in Part One cover wide-ranging topics relevant to legal persuasion, including explorations of cognitive science, classical rhetoric, literary theory, narrative theory, and jurisprudence.

The scholarly contributions that comprise this book instantiate the wisdom and vibrancy of legal writing's professional community. The collective format of the book also provides the student with an understanding that expertise in legal communication derives from many critical and interdisciplinary sources. In this way, the book supports the view that legal writing competence requires more than a superficial mastery of technical rules. Continuous knowledge-seeking from a wealth of sources is necessary in striving for expertise in legal persuasion, which reinforces the value of having legal writing teachers contribute to the legal scholarship.

Legal Writing Doctrine is Founded Upon Science

Edwards excerpts several authors whose research takes a scientific approach toward persuasion. Several of these articles approach persuasion from the perspective of cognitive science. When applied to legal persuasion, the value of cognitive science:

> lies in its ability to make explicit the unconscious criteria and cognitive operations that structure and constitute our judgment. It is by laying bare these cognitive structures and their impact on our reasoning that we can best aid legal actors—whether advocates or decision-makers—who wish to understand the law better so that they can act more effectively.[33]

For instance, in one excerpt, Professor Kathryn Stanchi applies the tested psychological principle of priming to making legal arguments.[34]

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[31] Edwards, *supra* note 3, at viii.

[32] Edwards, *supra* note 3, at xix.

[33] Steven L. Winter, A Clearing in the Forest: Law, Life, and Mind, at xi-xvii (2011), *as reprinted in* Edwards, *supra* note 3, at 250.

[34] Kathryn Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 Mich. St. L. Rev. 411, 415. [hereinafter Stanchi, *The Science of Persuasion*], *as reprinted in* Edwards, *supra* note 3, at 115.

If members of an audience are primed for an argument (if they have acquiesced to a request), then they are more likely to acquiesce to the next proposition.[35] As this pertains to constructing a legal argument, one can begin with seemingly inconsequential and uncontroversial premises that the reader will easily accept, creating a probability that the reader will remain consistent and acquiesce to each successive premise.[36] Another priming strategy is to begin with an argument premise that is big and for which one is unlikely to receive acquiescence.[37] The resulting sense of guilt or dissonance that comes from not acquiescing to the premise (or not complying with a tit for tat cultural norm) will increase the likelihood of a positive response to a smaller premise.[38]

Professor Stanchi then reports on the mind's two processing systems, the deliberative system that considers decisions consciously and the peripheral system that makes decisions unconsciously.[39] Stanchi suggests that activating the deliberative system is most effective for merits based arguments that lean in the client's favor.[40] However, when the merits do not weigh in the client's favor, the mind's more peripheral system is better suited for persuading through the use of abstract values.[41] Finally, in another excerpt, Professor Stanchi relates the results of psychological studies indicating that two-sided refutational messages (messages that propel an argument as well as identify and refute a counter-argument) are the most effective type of persuasive messaging in comparison with one-sided messages (messages that do not recognize a counter-argument), or two-sided non-refutational messages, which do not attempt to refute the counter-argument.[42] In contrast, the literature suggests one-sided messages are ranked as more effective than two-sided non-refutational messages, meaning that if one is not going to refute the counter-argument, then it is best not to even identify the opposing argument.[43]

Writing about the law from the perspective of the embodied mind, cognitive scientist Mark Johnson challenges the notion that legal categories and resultant legal meanings are the products of static pre-existing

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[35] Edwards, *supra* note 3, at 113, 115 (excerpting Stanchi, *supra* note 34).

[36] Edwards, *supra* note 3, at 113-17 (excerpting Stanchi, *supra* note 34).

[37] *Id.* at 122-24.

[38] *Id.*

[39] *Id.* at 133-36.

[40] *Id.*

[41] *Id.*

[42] Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 Rutgers L. Rev. 381 (2008) [hereinafter Stanchi, *Playing with Fire*], *as reprinted in* Edwards, *supra* note 3, at 166-67.

[43] Edwards, *supra* note 3, at 167 (excerpting Stanchi, *supra* note 42).

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concepts.[44] The embodied mind "operates a living human body that is continually engaging environments that are at once physical, social, cultural, economic, moral, legal, gendered and racialized."[45] Because our legal categories are not constructed in a vacuum apart from our physical, social, and political environments, it is a fallacy to approach categories as immutable, rigid, concepts.[46] Manipulating the language of the law to push the boundaries of existing legal categories is aligned with how the human mind constructs its understanding of the world, even if we are not consciously aware that this is how we think about the world.[47]

Professor Edwards excerpts sources that explain the powerful ways that metaphor and narrative work in our minds. From Robert Sapolsky, we learn why literary metaphors work so powerfully in the brain. Sapolosky tells us that the same part of the brain that activates disgust upon smelling rotten food is activated when one hears stories about egregious cruelty inflicted upon another human being.[48] Professor Jennifer Shepard explains that narrative holds such persuasive power because the human mind is predisposed to organizing experience in a narrative form.[49] Narrative is so effective because it operates subconsciously, and the "social knowledge embedded in the story" guides the decision rather than "the unique characteristics of the current situation."[50]

Finally, Professor Kenneth Chestek offers evidence to substantiate the claim that narrative reasoning is more persuasive than reasoning that

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[44] Mark L. Johnson, *Mind, Metaphor, and Law*, 58 Mercer L. Rev. 845 (2007), *as reprinted in* Edwards, *supra* note 3, at 233.

[45] Edwards, *supra* note 3, at 234-35 (excerpting Johnson, *supra* note 44).

[46] *Id.*

[47] *Id.*

[48] Robert Sapolsky, *This is Your Brain on Metaphors*, N.Y. Times (Nov. 15, 2010), *as reprinted in* Edwards, *supra* note 3, at 250.

[49] Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 Williamette L. Rev. 255 (2009) (citing Jerome Bruner, Acts of Meaning 45 (1990)), *as reprinted in* Edwards, *supra* note 3, at 277; *see also* Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 Seattle U. L. Rev. 767 (2006) (quoting Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 Mich. L. Rev. 2225, 2228 (1989)) ("The attraction of narrative is that it corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law."), *as reprinted in* Edwards, *supra* note 3, at 294.

[50] Edwards, *supra* note 3, at 278 (excerpting Sheppard, *supra* note 49) (citing Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S. Cal. Interdisc. L.J. 259, 264 (2009)).

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proceeds solely on logical firepower.[51] In Professor Chestek's empirical study, a set of judges and law clerks were presented with two briefs, a "story" brief and a "logos" brief.[52] Professor Chestek's results indicated that 64.2% of the study participants found the story brief to be "more persuasive" than the logos brief, and only 30.5% of the participants found the logos brief to be more persuasive than the story brief.[53]

The full-bodied scholarship excerpted in Edwards's book deepens our understanding of how to persuade legal audiences. Christopher Columbus Langdell, the 19th century Harvard law professor credited with inventing the case-method of legal education, famously declared that "[l]aw, considered as a science, consists of certain principles or doctrines."[54] Langdell's idea of treating law as a science has since been discredited, as legal outcomes are subject to too many uncontrollable variables to be tested in the same way as chemistry and biology hypotheses.[55] But, the idea of scientific knowledge—knowledge produced through empirical data collection and laboratory studies—carries great legitimacy when used to advance legal understanding.[56] Applying scientific principles and empirical approaches to discern the most effective methods of legal persuasion further legitimizes the doctrine of legal writing.

Legal Writing Doctrine Embraces Law as an Artistic Craft

To teachers and students, legal writing often feels like a non-creative enterprise, given its many requirements regarding form, citation, and technical compliance. For instance, Professor Carol Parker considers how the realm of legal education and its relentless focus on cases, rules, and form often leaves us feeling creatively stifled.[57] Professor Parker incorporates the ideas of legal philosopher James Boyd White, who suggests we approach the study of law as a liberal education, using our imagi-

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[51] Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 1, 10-22 (2010), *as reprinted in* Edwards, *supra* note 3, at 272-76.

[52] Edwards, *supra* note 3, at 273 (excerpting Chestek, *supra* note 51).

[53] *Id.*

[54] Carter, *supra* note 7, at 6.

[55] Romantz, *supra* note 1, at 116 (discussing that although Langdell's law as science theory has been rejected, his pedagogical contributions remain influential).

[56] *See* Timothy Zick, *Constitutional Empiricism: Quasi-Neutral Principles & Constitutional Truths*, 82 N. C. L. Rev. 115, 118 (2003) (citing Michel Serres & Bruno Latour, Conversations on Science, Culture and Time 87 (1995)).

[57] Carol Parker, *A Liberal Education in Law: Engaging the Legal Imagination through Research and Writing Beyond the Curriculum* 1 J. ALWD 130 (2002), *as reprinted in* Edwards, *supra* note 3, at 5-7.

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nations to develop our individual capacities as legal writers.[58] Thus, one of Edwards's primary themes is to reject legal writing as a discipline of drudgery, and instead celebrate its artistic attributes.

Professor Edwards writes that developing expertise in legal communication goes hand-in-hand with an exhilarating authorial autonomy, an autonomy that emphasizes "the kind of creativity and imagination that seems to be missing from much of traditional legal education."[59] In one such excerpt, James Boyd White celebrates the practice of law as a dynamic art form, proffering that "[e]very case, every legal conversation, is an opportunity to exercise the lawyer's complex art of mind and imagination."[60] For Professor White, the practice of law involves "the art of reconciling the ideal and the real" and the "art of language and judgment, an art of the maintenance and repair of human community."[61]

Thus, the authors excerpted in Professor Edwards's book present an invigorating view of what legal writing is—an art form. In this sense, referring to legal communication as art invigorates the legal writer's professional identity, imbuing legal authors with a spirited autonomy normally only associated with painters, filmmakers, and novelists. But, James Boyd White successfully persuades us that lawyers, too, function as auteurs who exercise professional judgment and discretion to resolve the tensions that arise when "the rules collide with reality."[62]

Having established a new aspect of our professional identity—writer as autonomous artist—Edwards provides a wealth of artistic techniques, drawn from literary theory, poetry, narrative, and rhetoric, which strengthen our craft.[63] We learn from Professor Steven E. Smith that lawyers should choose words that accurately convey legal concepts, but that also "provide aesthetic pleasure and engage the reader" in much the same way that poetry does.[64] Professor Bret Rappaport invites us to consider how our prose is heard and how we might employ rhythm, flow, and tone to reach "an older, deeper, and more instinctual part of the brain

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[58] Edwards, *supra* note 3, at 5-7 (excerpting Parker, *supra* note 57) (citing James Boyd White, *Doctrine in a Vacuum*, *in* From Expectation to Experience: Essays on Law and Legal Education 8, 13-14 (1999) [hereinafter White, From Expectation to Experience]).

[59] Edwards, *supra* note 3, at 5.

[60] Edwards, *supra* note 3, at 341 (excerpting White, *supra* note 17).

[61] *Id.* at 342.

[62] *Id.* at 340.

[63] *See* Edwards, *supra* note 3.

[64] Stephen E. Smith, *The Poetry of Persuasion: Early Literary Theory and Its Advice to Legal Writers*, 6 J. A.L.W.D. 55 (2009), *as reprinted in* Edwards, *supra* note 3, at 75.

than sight."[65] We learn an ancient and arresting technique from Professor Bruce Ching, the tricolon, which builds rhetorical strength from the power of three.[66]

Professor Edwards teaches the art of narrative and metaphor in legal advocacy. We learn that formal law itself, rules and analogies, are inherently narrative and can be manipulated for persuasive ends.[67] Edwards sets forth examples of master legal authors utilizing mythological archetypes to frame the law in a compelling way. Led through the respondent's brief in *Bowers v. Hardwick*,[68] Edwards demonstrates the authors employed an archetypical myth, the rescue story, and positioned the right to privacy in private relationships as the object of rescue.[69] Edwards offers another recognizable mythological narrative in the petitioner's brief from *Miranda v. Arizona*,[70] which presented the legal argument as a birth story, the origination of a new Fifth Amendment right.[71] Professor Ruth Ann Robbins suggests how to shape a narrative theory around the client and her case, especially when the client has some imperfections.[72] One solution, according to Professor Robbins, is to place the client in the role of a hero, understanding that the archetypical hero's myth begins with an imperfect hero and contains space for positive transformation.[73]

A vision of legal writing as art celebrates legal authors as autonomous creators of legal meanings, providing students and teachers alike with an electric sense of possibility. Approaching legal communication as an art form that requires a wide-ranging breadth of imagination, creativity, and discretion cements legal writing's place in the doctrinal curriculum. Legal writing is doctrinal because it affirms the autonomy that forms the

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[65] Bret Rappaport, *Using the Elements of Rhythm, Flow, and Tone to Create a More Effective and Persuasive Acoustic Experience in Legal Writing*, 16 J. Legal Writing 65 (2010), (quoting Peter Elbow, *The Music of Form: Rethinking Organization in Writing* 57 C. Composition & Comm. 620, 625 (2006)), *as reprinted in* Edwards, *supra* note 3, at 79.

[66] Bruce Ching, *Things in Threes—Utilizing Tricolons—a Linguistic Look*, The Law Teacher 18 (2008), *as reprinted in* Edwards, *supra* note 3, at 77.

[67] Linda H. Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 Legal Stud. F. 7, 20-27 (1996), *as reprinted in* Edwards, *supra* note 3, at 280-81.

[68] 478 U.S. 186 (1986).

[69] Brief for the Respondent, Bowers v. Hardwick, 478 U.S. 186 (1986) (No. 85-140), 1986 WL 720442; Linda H. Edwards, *Once Upon a Time in Law: Myth, Metaphor, and Authority*, 77 Tenn. L. Rev. 885 (2010), *as reprinted in* Edwards, *supra* note 3, at 312-17.

[70] 384 U.S. 436 (1966).

[71] Brief for the Petitioner, Miranda v. Arizona, 384 U.S. 436 (1966) (No. 759) 1966 WL 100543.

[72] Edwards, *supra* note 3, at 297 (excerpting Robbins, *supra* note 49).

[73] Edwards, *supra* note 3, at 295-300 (excerpting Robbins, *supra* note 49).

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core of a lawyer's professional identity.

Legal Writing Doctrine is Critically Introspective

Professor Edwards invites her readers to engage in valuable periods of critical introspection and to consider issues that are usually obscured in legal education. In the first excerpt of the book, veteran writing professor Carol Parker contemplates whether the traditional law school classroom presents law (in James Boyd White's phrase) as "doctrine in a vacuum,"[74] and if so, Professor Parker encourages us to approach writing as a liberating and liberal learning journey, where we learn law in a vibrant context created through our prior reading, thinking, and 'imagined future intellectual life.'"[75]

In other excerpts, legal writing professors wrestle with a well-known pedagogical paradox—that legal writing instruction instills a set of attitudes and beliefs (e.g., adherence to legal formalisms and stare decisis) that makes it difficult to innovate within the law. Professor Mary Falk, in considering how to infuse more "play" in legal writing, writes that legal writing might be incentivizing "compliance" at the expense of innovative thinking.[76] The result is that students become "authority junkies"[77] who are not able to play in the law or "think new thoughts about the law."[78] Professor Teresa Godwin Phelps questions whether legal writing professors are the "vampires of the first year, draining their students of the life-blood of creativity and storytelling."[79] Professor Falk argues that students can move beyond this legal education paradox by embracing the possibilities of play in the law, understanding that

> [a]nything can be analogized or contrasted or equated to anything. Boundaries—between civil and criminal, between law and economics—dissolve. There is no one to disapprove, to note dismissively that no court has ever so held. With no responsibility to espouse one idea, the lawyer can play flirtatiously with many.[80]

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[74] Edwards, *supra* note 3, at 5-7 (excerpting Parker, *supra* note 57) (quoting James Boyd White, *in* White, From Expectation to Experience, *supra*, note 58, at 13-14).

[75] Edwards, *supra* note 3, at 6 (excerpting Parker, *supra* note 57) (quoting James Boyd White, *in* White, From Expectation to Experience, *supra* note 58, at 15-16).

[76] Mary R. Falk, *"The Play of Those Who Have Not Yet Heard of Games": Creativity, Compliance, and the "Good Enough" Law Teacher*, 6 J. A.L.W.D. 200 (2009), *as reprinted in* Edwards, *supra* note 3, at 11.

[77] Edwards, *supra* note 3, at 7 (excerpting Falk, *supra* note 76).

[78] Edwards, *supra* note 3, at 7-8 (excerpting Falk, *supra* note 76).

[79] Teresa Godwin Phelps, *Tradition, Discipline, and Creativity: Developing "Strong Poets" in Legal Writing*, 20 Legal Stud. F. 89 (1996), *as reprinted in* Edwards, *supra* note 3, at 104.

[80] Edwards, *supra* note 3, at 10-11 (excerpting Falk, *supra* note 76).

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Professor Phelps argues that students have the power to overcome the paradox, writing with discipline (adhering to the formal rules of legal writing) and creativity.[81] Phelps writes that "[d]iscipline, in the sense of introduction into a tradition, is not the enemy of creativity, but its necessary ally, the requisite foundation without which fruitful creativity is not possible."[82]

Exposing students to a critique of legal education runs throughout many of Edwards's interludes. For instance, Professor Falk argues that the legal writing teacher should be candid and explain that law students are in the midst of "an education that threatens to destroy their ability to engage in the very activity it should prepare them for."[83] Devoting space to critiques of legal education is both brave and unique for any law school textbook. The goal is for the student to approach the law and legal problems with an expansive imagination, including material that questions why legal education and legal writing feel so uncreative, and to encourage the law student (and the teacher) to question some of the silent forces that contribute to law school's caged-in feel. In considering legal education's potential limits, legal writing professors are encouraged to discard old styles of thinking and adopt new modes that will further actualize legal writing.

The introspective interludes referenced above speak from the perspective of a legal writing teacher. Most authoritative texts provide information about the subject material, but rarely do we see information included that speaks to how it *feels* to teach the material. Viewing veteran legal writing teachers and scholars as our guides in these thought exercises provides a pedagogical safety zone. These scholars are telling us that despite what has been inculcated in us so far, it is acceptable to question authority and embrace innovative and contextual approaches to legal reasoning.

The reader is also invited to consider the unique power of legal language. Professor Stanchi invites us to consider that mastery of legal writing also carries the unintended consequence of "suppressing the voices of those who have already been historically marginalized by legal language."[84] Because legal writing emphasizes an abstract vantage point (for instance, we do not refer to the parties in a case by their real names), "proper" legal writing tends to exclude other more contextualized view-

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[81] Edwards, *supra* note 3, at 106-08 (excerpting Phelps, *supra* note 79).

[82] Edwards, *supra* note 3, at 108 (excerpting Phelps, *supra* note 79).

[83] Edwards, *supra* note 3, at 8 (excerpting Falk, *supra* note 76).

[84] Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 Dick. L. Rev. 7 (1998) [hereinafter Stanchi, *Resistance is Futile*], *as reprinted in* Edwards, *supra* note 3, at 17.

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points.[85] In mastering legal writing, we are excluding other viewpoints and silencing our own individual voices.[86]

Critically considering the power of legal writing arms the student with a better understanding of how her words directly impact outcomes once she gets out into practice. Thus, understanding the power of legal words is helpful for constructing holistic lawyers with professional and ethical mindsets. Considering how legal writing and power intersect supports the argument that legal writing is doctrinal—that it is more than just writing per se. Infusing some criticality into the teaching of legal writing accurately recognizes that "[a]ll legal communication takes place within a dense web of social and structural relationships which legal writing necessary reflects (and reproduces)."[87]

Plato credits Socrates for remarking that "the unexamined life is not worth living."[88] Edwards's introspective themes ensure that all readers (teachers and students alike) will walk away from the text with a greater awareness of some of the limits and paradoxes we face as legal writers. Contemplating how legal education tends to stifle creativity, we can visualize law as a space for innovation and play rather than just a narrow environment bound by rules and form. In studying legal writing, introspection also produces a meta-understanding of the competencies and skills we seek to acquire. In reading Edwards's book, we are of course acquiring legal knowledge, but Edwards carefully guides us to spaces where we can contemplate how our newfound knowledge (and the power it brings) fits into our vision of the lawyers we aspire to be. Legal writing's doctrinal emphasis on critical introspection encourages students to enter the legal community with compassion and discourages the adoption of a hired gun persona, happy to make any legal argument for remuneration.

Legal Writing Doctrine is Substantive

Legal writing has long been held hostage to the false view that it is not substantive. As the argument goes, legal writing lacks substance because writing is writing, designed to emphasize remedial composition skills

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[85] Edwards, *supra* note 3, at 17 (excerpting Stanchi, *supra* note 84).

[86] *Id.*; *see also* J. Christopher Rideout, *Voice Self and Persona in Legal Writing*, 15 J. Legal Writing 67 (2009) (quoting Julius Getman, *Colloquy: Human Voice in Legal Discourse: Voices*, 66 Tex. L. Rev. 577, 578 (1988)) (explaining how legal education seeks to develop the law student's "professional voice" which "situates itself at a distance, 'as though its user were removed from and slightly above the general concerns of humanity.'"), *as reprinted in* Edwards, *supra* note 3, at 20-21.

[87] Sossin, *supra* note 1, at 888.

[88] Plato, Apology, line 38.

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and nothing more.[89] Legal writing is rarely perceived as "important or as significant,"[90] but is usually treated as "marginal and peripheral."[91] Legal writing is a "non-intellectual . . . glorified grammar course[,]"[92] and being assigned to teach it "represents a real threat to success in achieving genuine legitimacy as a law teacher in the accepted [traditional] image."[93] On the other side of the coin are the "heroic" traditional casebook courses, referred to as substantive courses.[94] Because legal writing focuses heavily on what lawyers do, structural and historical forces have produced a deeply embedded, but erroneous, belief that legal writing is non-substantive. From a sociological and historical perspective, the hierarchical disparagement of legal writing may be the product of a professionalization process. At the turn of the century, elite law professors, formed in the mold of Harvard professor Christopher Columbus Langdell, sought to cement their legal education model as the *only* acceptable credential for entry into the profession.[95] This effort meant that the Harvard-style law professor had to distance himself from members of the practicing bar and practice-oriented teachers who held the keys to other credentialing models like the apprenticeship method and the lecture method of teaching, respectively.[96] As a result of this tension, elite law professors developed a professional identity emphasizing expertise in substantive law scholar-

[89] Rideout & Ramsfield, *supra* note 22, at 41. Professors Rideout and Ramsfield explain that this view that "writing is writing" originated in the now discarded "controlled composition" method of teaching writing, which proceeded upon the erroneous premise that writing is secondary to thinking. *Id.* at 44-45.

[90] Romantz, *supra* note 1, at 107.

[91] *Id.* at 133.

[92] Beazley, *supra* note 24, at 80.

[93] William H. Pedrick, William N. Hines, & William A. Reppy, Jr., *Should Permanent Faculty Teach First-Year Legal Writing?A Debate*, 32 J. Legal Educ. 414 (1982).

[94] Sossin, *supra* note 1, at 883-84.

[95] John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. Legal Educ. 311, 312-16, 320-22 (1985); *see also* Carter, *supra* note 7, at 30-32, 97-105. Professor Carter explains that Professor Langdell faced opposition from state bar associations' entry requirements, which required bar applicants to spend a certain amount of time in a law apprenticeship but did not grant credit to Harvard law graduates for time spent pursuing their degree. *Id.* at 30-32. Ultimately, Langdell elected to stop negotiating with the state bar authorities on the matter, which "he had to know . . . meant a move away from the bar itself." *Id.* at 32. As a result of these tensions, legal education moved away from the practicing bar as law professors began to emphasize their theoretical and scholarly prowess and exclude practicing lawyers from university centered legal education. *Id.* at 94, 97-105.

[96] Carter, *supra* note 7, at 94, 106; Schegel, *supra* note 95, at 320-22.

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ship and theory, but denigrating law practice.[97] This historical tension remains with us today, as practice-oriented teaching is still sometimes disparaged as reducing law school to a mere "trade school."[98]

Historical timing might provide an additional explanation for legal writing's impoverished identity. In the 1950s, when law schools first added legal writing courses to their curriculum, the mass of students attending law schools through the GI Bill lacked basic grammar and composition skills.[99] As a result, the new legal writing courses took on a remedial focus, an identity that remains attached to legal writing courses today.[100] At the same time, however, law schools were adding a separate course, Legal Method, which focused heavily on legal analysis and foundational jurisprudential theory, with some attention to legal bibliography. Yet, Legal Method did not incorporate an intensive writing practice.[101] Legal Method courses were added in the 1950s to develop "the student's own artistry in the use of the techniques of the profession . . . through the repeated and disciplined experience in case analysis and synthesis, and in the use of statutes."[102] Unfortunately, a dichotomy developed between legal writing courses, perceived as "extraordinarily simplistic" or "very

[97] Carter, *supra* note 7, at 94, 106; Schegel, *supra* note 95, at 320-22.

[98] The pejorative "trade school" label dates back to the turn of the century and was used to disparage students at part-time night schools serving mostly working class students. Robert Stevens, Law School Legal Education in America from the 1850s to the 1980s 113, 114-15 (1983). The appellation survives in the present and is used to insult schools that emphasize teaching and skills training. Laurel Terry, *Taking Kronman and Glendon One Step Further: In Celebration of "Professional Schools,"* 100 Dick. L. Rev. 647, 668-69, nn. 61-62 (1996).

[99] Romantz, *supra* note 1, at 128 (citing Marjorie Dick Rombauer, *First-year Research and Writing: Then and Now*, 25 J. Legal Educ. 540 (1973)).

[100] *See* Rideout & Ramsfield, *supra* note 22, at 41 (describing the traditional view of "legal writing courses as remedial, either explicitly or implicitly"). Writing in the 1970s, Professor Rombauer explains that the majority of law school's legal writing programs had adopted a remedial orientation, even though some programs, such as the University of Chicago Law School, touted their writing programs as incorporating both composition and substantive legal problem solving. Marjorie Dick Rombauer, *First-year Research and Writing: Then and Now*, 25 J. Legal Educ. 540, 541-42 (1973). Unfortunately, legal writing did not seize the opportunity for "teaching and honing the broader intellectual legal skills." *Id.* at 542.

[101] Rombauer, *supra* note 100, at 541. A few legal method courses did provide some training in writing. The legal method course at Rutgers was divided into three general topics: (1) lessons on legal research, (2) jurisprudence and constitutional analysis, and (3) writing assignments (a scholarly writing piece, a traditional research memorandum, and a transactional drafting exercise). Donald Kepner, *The Rutgers Legal Method Program*, 5 J. Legal Educ. 99, 99-100 (1952).

[102] Harry W. Jones, *Notes on the Teaching of Legal Method*, 1 J. Legal Educ. 14, 27 (1948).

unsophisticated,"[103] and Legal Method courses, grandiosely constructed as covering "competent case and statutory analysis, along with the huge complex of theories, traditions, conventions, and norms comprising the American legal science."[104] Legal Method courses were usually taught by traditional faculty,[105] but the writing courses were (and still are) taught by lower-tier teachers, adjuncts, and students.[106] However, as legal method courses have gradually disappeared from the law school curriculum,[107] legal writing teachers can and should claim this turf and engage with material that was once the domain of legal method courses.[108]

Legal writing professors know it is not possible to separate the compositional aspects of what we teach from the more dominant substantive aspects. We cannot separate the substance of the law from the words we use to forge legal meanings. We routinely cover the intellectual and analytical material covered by the old legal method courses. Professor Edwards's book illustrates the best argument for attacking the erroneous perception that legal writing lacks substance: *legal writing is lawmaking*.[109] In considering the role of lawyers in our common law system, Professor Linda Berger writes that we should situate legal writing as the process of making law, where "the law is 'constituted' as human beings located within particular historical and cultural communities [who] write,

[103] Richard B. Cappalli, *The Disappearance of Legal Method*, 70 Temp. L. Rev. 393, 432 (1997) (arguing that the legal writing course is not capable of teaching legal method material). Professor Cappalli, a legal method professor at Temple, further posits that several legal writing textbooks present "dubious, debatable, or flatly wrong" statements concerning synthesis and legal reasoning. *Id.* at 432-33. Fully challenging Professor Cappalli's criticisms is beyond the scope of this article, but it is worth noting that Cappalli's criticisms, viewed in the context of our highly indeterminate common law system, where there is rarely an agreed upon meaning for particular terms such as a rule or holding, seem myopic and pedantic.

[104] *Id.* at 431.

[105] *See id.* at 395-98. Implicit in Professor Cappalli's overall description of legal method is that it is the domain of the traditional casebook faculty member, rather than skills teachers, whom he holds partially responsible for driving legal method "into obscurity." *Id.* at 397.

[106] Romantz, *supra* note 1, at 132.

[107] *See* Cappalli, *supra* note 103, at 405-11 (describing the gradual drop-off in law schools offering legal method courses).

[108] Of course, one challenge is how to fit this material into the writing curriculum in the first-year, or instead to stagger it throughout the first-year and upper level courses.

[109] White, *supra* note 15, at 162 (concluding that students consider and apply the law, they are actually engaging in the process of making law).

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read, argue, and decide legal issues."[110] James Boyd White argues that the goal of the lawyer in interpreting the law and contributing to the process of making new law is to "reconstitute the material of the past to claim new meaning in the present and future."[111]

Understanding legal writing as law-making enables us to reject the false dichotomy between technical form and substantive law and forge a new identity as law teachers who engage our students with legal theory, substantive law, and the art and craft of effective legal communication. Professor Edwards's excerpt "Using Legal Theory to Sharpen Your Legal Arguments" exemplifies how legal writing courses meld theory, substance, and practice together.[112] This excerpt explains how to recognize various jurisprudential theories in a case and then utilize that reasoning in one's own argument. The pertinent jurisprudential theories are presented chronologically—natural law, formalism, legal realism, legal process, fundamental rights, law and economics, and critical legal theory—in the same order that a student would learn about them in a jurisprudence course.[113] Also included are short case opinion excerpts that test the student's ability to discern the jurisprudential posture of the judicial author.[114]

This excerpt shows that jurisprudence, traditionally categorized as an intellectual and theoretical subject existing on a higher plane than legal writing, is actually intimately connected with the process of legal writing.[115] Competent legal writing, particularly the process of analyzing judicial opinions and forming grounded policy arguments, requires a basic understanding of the philosophical concepts that underlie all legal reasoning. An appreciation for legal theory, both in practice and in critical approach, is integral to being able to manipulate and mold the law on behalf of one's client.

Legal writing teachers should reject the false dichotomy between substance and writing because it harms students; the dichotomy "cripple[s] legal writing programs because [it has] ensured that the complex task of introducing novices to legal discourse cannot be reasonably

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[110] Linda L. Berger, S*tudying and Teaching "Law as Rhetoric": A Place to Stand*, 16 J. Legal Writing 3, 5 (2010), *as reprinted in* Edwards, *supra* note 3, at 37.

[111] Edwards, *supra* note 3, at 330 (excerpting White, *supra* note 17).

[112] Linda H. Edwards, *Using Legal Theory to Sharpen Your Arguments in* Linda H. Edwards, Legal Writing & Analysis 227-43 (3d ed. 2011) [hereinafter Edwards, *Using Legal Theory*], *as reprinted in* Edwards, Readings in Persuasion, *supra* note 3, at 181-202.

[113] Edwards, Readings in Persuasion, *supra* note 3, at 181-202 (excerpting Edwards, *Using Legal Theory*, *supra* note 112).

[114] *Id.*

[115] Edwards, Readings in Persuasion, *supra* note 3, at 181-202 (excerpting Edwards, *Using Legal Theory*, *supra* note 112).

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undertaken."[116] Presenting ourselves as substantive law professors is a very hard task when the dichotomy is engrained in the foundation of our institutional culture and power structures and often results in unfair and unequal treatment (manifesting in disparate salary, job security, job title, and other status markers). However, legal writing teachers should project ourselves as we want to be perceived, regardless of how others actually perceive us. Unlike traditional casebook faculty, who may have forged a professional identity that emphasized theory and law at the expense of practice,[117] our professional identity should be founded upon inclusion, not exclusion. In this day and age, where sky-rocketing tuition, onerous student debt, and a constricted job market has called into question the value of the J.D., the legal writing teacher's ability to connect the dots between substance, theory, and the art and craft of law practice puts her in a position to propel legal education in innovative directions.[118]

Legal Writing Doctrine Contextualizes and Humanizes the Traditional Case Method

In Part Two, Edwards's use of exemplary appellate briefs and cases to illustrate how legal writers positively contribute to the production of law directly aligns with a traditional, Langdellian[119] vision for legal education pedagogy. Moreover, the expansive way in which Edwards employs these materials improves Langdell's case-method. Professor Langdell's vision of law teaching, requiring students to study a series of appellate cases with the goal of synthesizing general legal principles from them, improved upon the pre-existing lecture method of legal education, which had students learning the law through rote memorization of hornbook texts and professor lectures.[120] A little known fact is that Langdell placed great importance on connecting legal theory to practice.[121] For instance, in his civil procedure course, Langdell had his students work in small groups to draft pleadings and then assigned his students to argue against

[116] Rideout & Ramsfield, *supra* note 22, at 41.

[117] *See supra* notes 95-98 and accompanying text.

[118] *See* Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in its Wake*, 10 Seattle J. Soc. Just. 49 (2011).

[119] Langdellian refers to Harvard professor Christopher Columbus Langdell, credited with inventing the case method of legal education. Carter, *supra* note 7, at 49-52; Romantz, *supra* note 1, at 112-18.

[120] Carter, *supra* note 7, at 52; Romantz, *supra* note 1, at 116.

[121] Carter, *supra* note 7, at 60, 68. Langdell writes that "[t]o have such a mastery of [legal concepts] as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer." *Id.* at 60 (quoting Christopher C. Langdell, A Selection of Cases on the Law of Contracts vi (The Lawbook Exchange ed. 1999 (1871)).

each other.[122] Langdell presided over weekly practice arguments[123] and participated in Harvard's extracurricular appellate advocacy and brief-writing exercises.[124]

Langdell's case method thus improved legal education by placing the student in the driver's seat. Early on, Langdell's vision for legal education was holistic and practice oriented.[125] As Langdell's case method developed and others adopted it, the method evolved into an intensive and adversarial approach to Socratic questioning[126] and the elevation of theory and doctrine at the expense of practice skills.[127]

In its current form, Landgell's case method has been criticized as creating an unrealistically abstract version of reality,[128] one where students are encouraged to push social context and morality to the margins and focus the narrow skill of applying a closed set of facts (the relevant facts) into abstract legal categories.[129] "The problem is that as students are drawn into this new discursive practice, they are drawn away from the norms and conventions that many members of our society, including future clients, use to solve conflicts and moral dilemmas."[130] A common criticism of the overall thrust of legal education is that its heavy reliance on the case method unduly rewards "theory over practice, scholarship over teaching, cognitive [analysis] over ethical engagement."[131] Despite these well-founded criticisms, Langdell's case method remains an "elegant" pedagogy that continues to instill a deep and adaptive understanding of the law.[132] It succeeds in developing a student's cognitive and

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[122] Carter, *supra* note 7, at 65.

[123] *Id.* at 66.

[124] Romantz, *supra* note 1, at 127-28.

[125] *See* Carter, *supra* note 7, at 60.

[126] Landgell himself was described as a "gentle, modest, [and] even kind." Carter, *supra* note 7, at 63.

[127] *Id.* at 94, 103, 106.

[128] William M. Sullivan, et al., Educating Lawyers, Preparation for the Profession of Law 55 (2007) (sponsored by the Carnegie Foundation for the Advancement of Teaching); *see also* Lopez, *supra* note 7, at 336 ("Make anyone read, talk about, and deploy too many appellate cases, they say, and you'll see them inevitably move away from everyday life—away from detail, away from context, and away from passion."); Jerome Frank, *Why Not A Clinical Lawyer School*? 81 U. Pa. L. Rev. 907, 911 (1933) (Judge Frank writes that edited appellate opinions are "emasculated explanations of decisions . . . of limited assistance to the practicing lawyer.").

[129] Mertz, *supra* note 9, at 99.

[130] *Id.*

[131] Sullivan, et al., *supra* note 128, at 114 (citing Bryant Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. Legal Educ. 469 (1993)).

[132] Romantz, *supra* note 1, at 106, 118.

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analytical legal skills.[133] And it is an efficient pedagogical tool, an "intellectual Model T, a wholly complete, conceptually unified universe to put in the mind of the standard student."[134] Cognizant of the case method's limits, conscientious legal educators now seek to augment the case method by infusing more context and grounded problem-solving approaches into the classroom.[135]

Edwards's book expands upon Langdell's original vision for legal education by injecting vibrant historical and cultural context to the cases being studied. We understand that these cases, and the advocacy that produced their outcomes, involve "real people with real problems."[136] For instance, in learning about the *Muller v. Oregon*[137] case, for which Louis Brandeis produced the so-called Brandeis brief, we have come to understand the case's labor history context and the un-heralded role of the female law advocates who formed the social science arguments in Brandeis's brief.[138]

The excerpts on *Brown v. Board of Education*[139] and *Loving v. Virginia*[140] humanizes the plaintiffs and reveals why they decided to litigate their civil rights.[141] *Meritor Savings Bank v. Vinson*[142] illustrates how critical legal theorist Catherine Mackinnon artfully deployed legal theory in a

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[133] Sullivan, et al., *supra* note 128, at 11.

[134] Schlegel, *supra* note 95, at 323.

[135] *See*, *e.g.*, Janeen Kerper, *Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie The Pooh Meets Mrs. Palsgraf*, 34 Cal. W. L. Rev. 351, 352 (1998) (arguing that teachers can utilize the problem-solving method in conjunction with the case method, which is only "one analytical tool among many" to produce better student learning outcomes); D.A. Jeremy Telman, *Langdellian Limericks*, 61 J. Legal Educ. 110, 112 (2001) ("One can supplement the case method with legal limericks in a way that tempers the naive scientism, formalism, intimidation of students and other-worldliness that can characterize Socratic courses."); Craig J. Albert, *Property in Context*, 22 Seattle U. L. Rev. 873, 890 (1999) (reviewing J. Gordon Hylton et al., Property Law and the Public Interest (1998)) (explaining that the case method works well if a case book author can present the cases with an "overarching context").

[136] Lawrence Lessig, *A Message to Law Grads, Instead of Corporations, Help Ordinary People*, The Atlantic (May 31, 2012, 5:20 PM), http://www.theatlantic.com/national/archive/2012/05/a-message-to-law-grads-instead-of-corporations-help-ordinary-people/257945/.

[137] 208 U.S. 412 (1908).

[138] Linda Edwards, Muller v. Oregon, *in* Edwards, *supra* note 3, at 350-52.

[139] 347 U.S. 483 (1954).

[140] 388 U.S. 1 (1967).

[141] Dean John Valery White, Brown v. Board of Education, *in* Edwards, *supra* note 3, at 357-61; Dean John Valery White, Loving v. Virginia, *in* Edwards, *supra* note 3, at 362-65.

[142] 477 U.S. 57 (1986).

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successful way.[143] We understand the privacy cases, *Bowers v. Hardwick*[144] and *Lawrence v. Texas*[145] from the perspective of the individuals whose privacy was infringed upon.[146] *Gideon v. Wainwright*[147] represents a human portrait of a pro-se litigant who changed the course of the criminal justice system. We were introduced to the children implicated in the juvenile punishment cases of *Furman v. Georgia*[148] and *Roper v. Simmons*.[149]

Using real cases infused with context to illustrate how advocacy and rhetoric shapes the law presents a holistic framework for learning the law. Edwards's book illustrates three objectives for legal education identified in the Carnegie Foundation's 2007 report on legal education—analytical ability, ethical awareness, and the lawyer's professional identity.[150] The book is also laudable for including the briefs that produced the legal outcomes in these cases. Students who use this book will form independent conclusions of advocacy approaches employed by the brief authors. The doctrine of legal writing encompassed in this book is in line with a traditional Langdellian approach to legal education, but it is also innovative because it humanizes and contextualizes the legal process.

Conclusion

Returning to the metaphor that legal education is a religious experience,[151] but focusing on individual enlightenment, we might characterize Professor Edwards's book as a concordance for the doctrine of legal writing. Professor Edwards's book teaches that mastery of the doctrine of legal writing produces nothing less than law-makers, professional community members vested with the power and ability to shape the structure of legal outcomes that profoundly impact one's societal framework. As Edwards's book evinces, the inception of legal writing as a doctrine has been borne out through the sweat of the many master teachers and scholars represented in the book. Many of these teachers have labored

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[143] Ann C. McGinley, Meritor Savings Bank v. Vinson, *in* EDWARDS, *supra* note 3, at 378-84.

[144] 478 U.S. 186 (1986).

[145] 539 U.S. 558 (2003).

[146] Carlos A. Ball, Bowers v. Hardwick & Lawrence v. Texas, *in* EDWARDS, *supra* note 3, at 400-14.

[147] 372 U.S. 335 (1963); Penny J. White, Gideon v. Wainwright, *in* EDWARDS, *supra* note 3, at 424-29.

[148] 408 U.S. 238 (1972).

[149] 543 U.S. 551 (2005); Sean D. O'Brien, Furman v. Georgia & Roper v. Simmons, *in* EDWARDS, *supra* note 3, at 433-43.

[150] *See generally* WILLIAM M. SULLIVAN, ET AL., *supra* note 128 (examining the results of a two-year study of legal education conducted at sixteen American and Canadian law schools from 1999-2000).

[151] MERTZ, *supra* note 9, at 51.

in an academy that viewed legal writing as "donkey work"[152] that could never be a substantive or an intellectual enterprise of value. Nonetheless, these expert teachers and scholars, led by Edwards, have produced an enduring wisdom that affirms the rewarding and empowering possibilities of law teaching and law practice.

[152] William Pedrick and William A. Reppy, Jr., *Should Permanent Faculty Teach First-Year Legal Writing? A Debate*, 32 J. Legal Educ. 413, 414 (1982).

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