

A Promising Amalgamation

Law, Poetry, and the Making of Legal Writers

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Abstract

First-year law students often struggle with the transition from writing as an undergraduate to writing as a lawyer. Incorporating poetry into the first-year legal writing curriculum may assist students in making that transition. The close, active reading poetry requires is a strong scaffold to the critical reading lawyers must undertake. In addition, poetry aptly models how language can create an emotional impact, which is akin to how effective lawyers use language to tell a compelling story on their client's behalf. This assignment has students read and analyze Gwendolyn Brooks's poem "Boy Breaking Glass," and then imagine the protagonist of the poem was being criminally prosecuted for his act of vandalism and write the story of the case from both the defense side and the prosecution side. The assignment enables students to appreciate how a text (or a set of facts giving rise to a legal dispute) can give rise to varied interpretations, and how language and storytelling techniques can be used persuasively.

Introduction

The Socratic Method. The Case Brief. The Interoffice Memo. IRAC. First-year students are presented with new terms like these immediately upon entering law school. Many students hope they are ready to tackle the challenges of my class, legal writing, at least because, after all, they already *know* how to write. But, alas, legal writing becomes the course many first-year law students struggle with the most. One strategy for assisting new law students in transitioning from undergraduate writing to legal writing is to draw upon their prior experience in other academic disciplines. I spent seven years teaching high school English before becoming a lawyer. In that time, I taught a number of English courses and incorporated poetry into all of them. Poetry challenges students in two significant ways: first, it demands critical reading. Second, it requires an awareness of and appreciation for how language operates to create images and themes, and to evoke emotional responses from the reader. Now that I am a law professor, I remain convinced that the challenges of reading poetry are valuable to all students, even (or perhaps especially) to law students. The question is, can using poetry in a legal writing course help students to transition successfully from undergraduate writing to legal writing?

I teach two sections of a year-long two-semester legal writing class to first-year law students. In the first semester, the course focuses on how to apply legal authority to a new issue to predict how a court would likely decide that issue. In the second semester, the course focuses on writing persuasively to the court to convince a judge to rule in the client's favor. In both semesters, I aim to help students bridge the gap between the writing they have done as students and the writing they will do as lawyers. Students must transition, and transition again: in the first semester, students move from undergraduate writing to communicating the rigorous objective analysis required to predict the outcome of a legal dispute. They must transition again in the second semester, moving from objective analysis to persuasive argument.

I teach students a range of persuasive writing techniques in an effort to ease that second transition. We discuss, among other techniques, how to explain the law in a way that favors the client's position and how to organize the arguments in a brief to maximize their impact. We also

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discuss strategies for presenting facts in a compelling narrative. Of course, effectively writing either objectively or persuasively requires students (and lawyers) to have first critically read the relevant legal authorities. Both kinds of writing also require a sure command of language: precision, concision, connotation, and denotation matter. Because students often struggle with composing a fact section of a brief, as well as with how to use language impactfully in making a legal argument, I wanted to explore how I might better teach strategies for building these skills. So, I went back to poetry, and it was there that the assignment that is the focus of this essay was born.

The assignment was twofold. First, students read, analyzed, and discussed Gwendolyn Brooks's poem "Boy Breaking Glass."¹ Second, students were instructed to imagine the protagonist of the poem, the boy, was being criminally prosecuted for his act of vandalism, and to write the story of the case from both the defense side and the prosecution side.

Creating the Assignment

It had been a while since I read "Boy Breaking Glass." Years ago, I taught it to my 11th grade English classes, in a unit on The American Dream. When I came across the poem more recently—and after becoming a lawyer—it occurred to me that it explores social justice issues also present in the law. As one critic observed, "'Boy Breaking Glass' centers on one boy breaking windows around his city, desperately trying to find his place in America" (Leaf, 2022, p. 65). Brooks dedicated the poem to Marc Crawford, who had asked her to write about racial inequality in America. Specifically, "Marc Crawford, to whom the poem is dedicated, asked Brooks to think about how Blacks interpret freedom in the United States, urging her to question how Black youth deals with inequality" (Leaf, 2022, p. 65).

The poem, which is written from the speaker's point of view and also incorporates dialogue from the boy, begins with the speaker saying this: "Whose broken window is a cry of art" (Brooks, 1987). The boy who has broken the window proclaims, "I shall create! If not a note, a hole. / If not an overture, a desecration" (Brooks, 1987). The boy "desperately tries to find a sense of belonging in his country but cannot find ears that will listen" (Leaf, 2022, p. 66). He says, "Nobody knew where I was and now I am no longer there," expressing ideas of isolation and erasure, from his community or from his country (Brooks, 1987). The boy goes on, "It was you, it was you who threw away my name! / And this is everything I have for me" (Brooks, 1987). These lines underscore the boy's feeling of being utterly disregarded and that his "cry of art" is all that he has left.

The poem's speaker then states, "Who has not Congress, lobster, love, luau, / the Regency Room, the Statute of Liberty, / runs. A sloppy amalgamation." The images in these lines "are symbolic of the American identity," but "the boy is deprived of them" (Leaf, 2022, p. 66). The speaker places the blame on America "as a whole" for creating "troubled youth" (Leaf, 2022, p. 66). The poem "presents a boy who desires to use art as an outlet for social justice, ultimately turning to violence, unwilling to be yet another voice left unheard" (Leaf, 2022, p. 67). If one imagines that the boy in the poem enters the justice system as a criminal defendant because of his "broken window," the idea that there is a story behind every legal case—sometimes an intensely compelling story—emerges.

Scholarly research supports incorporating poetry into the law school classroom, particularly into the first-year legal writing curriculum. Although teaching law, and legal writing, "through literature and literary techniques is generally useful, as supported by the law and literature movement—poetry, nevertheless, is the most useful for law students and law school training" (Vasiu, 2018, pp. 4-5). In part this is because "[a]nalyzing poetry gives law students the opportunity to issue-spot and delve into ambiguities, dissect language, and interpret with ease—the

‘study of poetry and the study of law may at first seem strange bedfellows, but they actually lie most comfortably together; to understand the law is to understand the possibilities of texts, and that is precisely the province of the study of poetry’” (Vasiu, 2018, p. 6, as cited in Gopen, 1984, p. 347). The most salient connection between law and poetry is that both are dependent on the power of language: “law and poetry have language in common. Both disciplines communicate their meanings, aspirations, rules and import through language. The study of law and poetry is, in crucial ways, the study of language” (Eberle & Grossfeld, 2006, p. 356). Poetry, as distinct from other types of literature, has an “intensity or naked truth” that makes it especially instructive for lawyers (Madigan & Tartakoff, 2000, p. 44). Reading poems “sharpen a lawyer’s eye and ear for the type of language that encourages critical reflection” (Madigan & Tartakoff, 2000, p. 44). Poetry also “teaches lawyers not to dilute their language” (Madigan & Tartakoff, 2000, p. 44). “A poem’s intensity or naked truth—its wit, wisdom, or humor—should help lawyers insightfully question what they hear, see, or read. In turn, they can incorporate such potency into their own written and oral arguments” (Madigan & Tartakoff, 2000, p. 44).

For students to understand and interpret a text, whether it is a legal text or otherwise, they must be able to read it carefully. Thus, the assignment first aims to show students the importance of critical reading. Curtis and Karp’s description of critical reading is instructive: critical reading is “creating meaning within a text” which involves “learning to evaluate, draw inferences, and arrive at conclusions based on evidence” (Curtis & Karp, 2005, p. 296). Critical reading is an active process. In this way, the act of reading a poem has much in common with the reading lawyers must do. In both disciplines, diction, connotation, denotation, tabulation, and punctuation must be noted, contemplated, and assessed. Both demand metacognition, rereading, and active meaning-making. Critically reading a poem necessitates delving into an entire text, word by word, line by line; it entails examining an entire text in its smaller syntactical parts and also considering how those parts come together to create meaning as a whole. A judicial opinion is not necessarily an ideal text for practicing this type of critical reading because of its length and structure. The length and structure of many poems, however, are conducive to such a reading, in part because “a poem’s relative brevity allows for detailed analyses of nearly all of its words and how they achieve their effects” (M. Meyer, 2007, p. 648). Shorter poems also lend themselves to the rereading necessary for understanding a text. As M. Meyer (2007) observes, “[t]o read a text accurately and validly—neither ignoring nor distorting significant details—we must return to the work repeatedly to test our responses and interpretations” (p. 678). Reading as a lawyer requires the same kind of repeated, active reading.

Composition theory is also instructive in considering the connection between critical reading skills and writing skills. Composition theorists “have noted that the failure of a document to communicate ideas clearly often stems from the failure of the writer to understand the person or persons to whom the document is addressed” (Eichhorn, 1999, p. 152). Strong legal writing, therefore, requires the writer to “take into account the intended reader’s background knowledge, sophistication level, and need for specific new information” (Eichhorn, 1999, p. 153). Law students, thus, should focus not so much on what “the writer should and should not do,” but instead on “what readers actually do” (Gopen, 2011, p. 21). According to Gopen (2011), “[t]he interpretive process any reader uses is controlled by... structural location, grammatical construction, and context” (p. 22). Structural location means that “[w]here a word appears in a sentence will control much of what a reader is likely to do with it” (Gopen, 2011, p. 22). Grammatical construction is important, according to Gopen (2011), because “[r]eaders pay different amounts of attention to information depending on in what kind of ‘unit of discourse’ it appears” (p. 22). Finally, context delineates the idea that “[n]o single sentence ‘means’ by itself but only in combination with the other sentences that surround it” (Gopen, 2011, p. 22).

Although Gopen’s theory—termed Reader Expectation Theory—applies best to reading prose (not poetry), its focus on the reader is instructive for the aims of the assignment. Discussing the poem required students to assess their own response to it as readers. In so doing, they evaluated how the language in the poem operated based on its placement in a sentence, unit, or relative to other lines of the poem. In short, they considered how the choices a writer makes in using words does impact the reader’s interpretation of what those words mean.

The writing component of the assignment encouraged students to consider how narrative theory and storytelling techniques could enhance legal arguments. Good lawyers tell good stories. As P. Meyer (2014) notes, “[m]ake no mistake about it—lawyers are storytellers. It is how we make our livings. In law practice effective storytelling is often outcome-determinative; sometimes it is literally a matter of life or death” (p. 2). Narrative theory is the “the study of Story *construction*, which is different from—though clearly related to—story *telling*. Construction is the act of building: putting together the elements that comprise the story and then writing it down” (Grose, 2010, p. 39). Grose (2010) goes on to explain the questions one might ask in studying that process of construction: “What are the elements of this story? What choices must the author make about those elements? What process does the author go through to make those choices? By choosing what goes into the story, what has the author left out? How is the story different as a result of those choices? Have those choices been made intentionally or reflexively? What factors influence the author in making those choices?” (pp. 39-40). Putting narrative theory into action “is the practice of storytelling: the actual craft of constructing stories, based on choices made with intention and reflection by the lawyer and her client” (Grose, 2010, p. 40).

In fact, “[t]he most powerful tool for persuasion may be the *story*” (Foley & Robbins, 2001, p. 465). Using narrative theory and storytelling practice in the law school curriculum “both starts from the premise and leads to the realization that The Law is made up of a set of stories that have been adopted by decision makers and that those stories have been constructed by none other than lawyers. When students arrive at this conclusion, they begin to recognize the power and responsibility they hold as story constructors—makers of The Law” (Grose, 2010, pp. 40-41). Thus, “[u]nderstanding storytelling is a way to understand persuasion. We persuade by telling stories that decision makers believe and adopt” (Grose, 2010, p. 46). Incorporating narrative theory and storytelling practice into legal education “can help students understand that there is no such thing as the monolithic Law, rules that are simply discovered or found out there somewhere. Instead, law comprises a series of stories—ever changing—and those stories are constructed not by some objective external Decision Maker in the Sky, but by lawyers, lawyers who once were law students” (Grose, 2010, p. 48). Further, storytelling can “help students hear and incorporate the voices of ‘outsiders’ as they engage in and practice various lawyering skills, and to challenge them to think creatively and compassionately about their case strategy and practice” (Grose, 2010, p. 49). In sum, “as lawyers we have much to learn from studying the craft of storytelling and applying these lessons to our legal practice. As professional storytellers we can do our jobs better the more consciously we deploy the tools of the storyteller’s craft” (P. Meyer, 2014, p. 2).

Implementing the Assignment

The assignment was given at approximately the mid-point of the second semester. Students had already completed their first writing assignment—a memorandum of law in support of a preliminary motion—and were writing a memorandum of law in support of a motion for summary judgment. Students had completed in-class exercises on developing a theory of the case. The theory of the case, a key tool of written and oral advocacy, is a “persuasive explanation of the events at issue in [the] case” (Johnson, 2021, p. 38). It is “the basic underlying idea that

explains the legal theory and factual background” which “ties the evidence into a coherent whole” (Johnson, 2021, p. 38). The theory of the case “begins with finding in the facts a story that moves the court to hold in your favor and provides the legal grounds for so doing” (Shapo et al., 2018, p. 386). An effective theory of the case will “resonate with [the lawyer’s] and other people’s experience and knowledge of the world” (Shapo et al., 2018, p. 386). Historically, students struggle with understanding and developing a theory of the case. This struggle is neither unexpected nor unreasonable, given the prodigious skill required in integrating law and fact to create a case theory. Nevertheless, since the ability to create a theory of the case is such a critical component of effective lawyering, it is important for students to gain experience with it during their legal education. Part of the inspiration for the assignment was to develop another method of teaching students how to create a compelling case theory.

I introduced the assignment by providing students with some background on narrative theory and storytelling techniques, connecting narrative and storytelling with the prior instruction on theory of the case. Before reading the poem, I asked students to put away their phones and computers. I wanted them to be fully engaged in reading without stopping to look up possible interpretations of the poem online. Additionally, I hoped students would realize that the thinking and meaning-making they were capable of on their own was all they needed to analyze the text. Lawyers, at times, must read and interpret texts for which there is no prior existing interpretation to look to for guidance. Law students, therefore, need to practice this important skill, and feel increasingly confident in it.

Students read “Boy Breaking Glass” three times. First, I read the poem aloud to the class. Next, students read the poem to themselves a second time, with no pen in hand. Finally, they read the poem to themselves a third time, this time making annotations as they read. I specifically asked students to note their questions about the poem, to circle words and phrases they found especially powerful, and to begin to analyze the poem’s meaning. I developed this pedagogical method in the seven years I spent teaching high school English. M. Meyer (2007) suggests reading a poem aloud before reading it silently (p. 21). In addition, Mayes (2001) provides guidelines for reading poems, which suggest to “[r]ead a poem once silently, then once aloud, just listening to the sounds,” and also to “consider what parts of the poem are effective, who the speaker is, what parts of the poem are difficult” (pp. 8–9).

It is a difficult poem. “Boy Breaking Glass” is powerful, but it is challenging to understand at the outset. After the first reading, the consensus was that no one had any idea what the poem was about. As students read it twice more on their own, their engagement was evident. They were actively annotating. Their focus was palpable. (It occurred to me that perhaps I was on to something by asking students to put their computers away, and I wonder if this is something I should incorporate into lessons more regularly.)

Before discussing the poem as a class, I provided students with a very brief explanation of reader response literary theory, emphasizing that—for the purposes of our discussion and the assignment—there was no singular, correct interpretation of the poem; rather, an interpretation is valid as long it can be supported by the text. According to reader response criticism, a literary work “is seen as an evolving creation of the reader’s as he or she processes characters, plots, images, and other elements while reading” (M. Meyer, 2007, p. 662). As M. Meyer (2007) goes on to explain, “[t]here is no single definitive reading of a work, because the crucial assumption is that readers create rather than discover meanings in texts” (p. 662).

Next, I asked students what questions they had about the poem. I was hoping that the first question asked would be “Who is Marc Crawford?” It was. I told students that, at least according to one critic, Marc Crawford was another writer who asked Brooks to write a poem about inequality in America (Leaf, 2022, p. 65). I wanted students to have just this piece of

context regarding what the poem may be “about” to ensure they did not get too far off track. In retrospect, I do not think students needed any information beyond the poem. Based on their subsequent discussion of the poem, and the writing they produced in fulfilling the assignment, it was evident that students understood how the theme of inequality permeated the poem. In fact, when I asked them if they were surprised at Marc Crawford’s request after answering their initial question, almost all of them shook their heads indicating they were not.

As the discussion continued, students actively participated, with more of them contributing than in other class sessions, including some who did not avidly participate in the more traditional legal discussions we had at other times. I wonder if this was, in part, because they had time in class to read the material and thus felt more comfortable talking about it. I also wonder if, because we were discussing something that was not *the law*, some students felt less intimidated by the subject matter and thus more able to contribute to the dialogue. Or maybe they simply enjoyed it? Several students commented after class that it was nice to read something other than law for a change.

I was impressed by the skill with which students discussed different interpretations of a single line of the poem, appreciating how either interpretation was supported by the text. For example, some students interpreted the line “the only music is in minors” (Brooks, 1987) to mean that only youth are capable of the creativity and joy that music-making entails. Other students interpreted that line to mean that the only music heard is in a minor key, indicating sadness or melancholy music in minor keys evokes. This is the kind of thinking lawyers do, especially as each side develops a different story of *what happened and why* from the same set of facts. Using the poem to practice this kind of strategic, imaginative thinking allowed students to see and understand how a set of undisputed facts can be told from various perspectives, all of which have validity.

Students also skillfully discussed the significance of diction. For instance, they addressed Brooks referring to the protagonist of the poem “boy” and how this word connoted childhood and innocence. Students were able to contemplate how the choice of the word “boy” gave the protagonist a kind of sympathy he may not have inspired if he were instead referred to by a proper name or as “male” or “teenager” or even “youth.”

For the written component of the assignment, which they completed on their own over the next few days, students were asked to imagine the protagonist of the poem, the boy, was being criminally charged for his act of vandalism. They were asked to tell the story of the case as if they were the boy’s defense attorney, and then to tell the story of the case as if they were the prosecutor. Students were also told that, in preparing their stories, they might also write about what additional information each side might seek in developing the story. I provided students with a list of questions to consider as they prepared their stories, which included the following: What happened, and why? What should the fair outcome be? What is the human element to what happened? How can you tell your client’s story to achieve justice? Students were not allowed to do any research or consult any outside source to complete the assignment. Rather, their stories were to be rooted in and supported by only the text of the poem.

In assessing the written component, I was looking for two things. First, did the story demonstrate critical reading by going beyond an initial emotional response to the poem? During class discussion, it was evident that the students—at the very least—understood that the boy felt disenfranchised by society, felt frustrated, felt desperate. I wanted the stories to go beyond an initial empathetic response to the boy and draw on larger thematic ideas. I wanted students’ stories to show an awareness of the themes at the poem’s core—inequality, isolation, disenfranchisement—and how those themes can impact an individual in America.

Second, did the story demonstrate an awareness of how language can be used to tell a

compelling story—here, one that has an emotional impact on the reader? One way to create an emotional impact is by carefully considering word choice. Here, I wanted students to incorporate language from the poem to enhance their own writing. Students had been working on how to integrate language from legal authority into their legal writing, and I was eager to see how these skills would transfer to a storytelling context. Further, if we accept the premise that the poem is about, broadly speaking, inequality, that theme is one about which students can feel passionate. I hoped students could channel that passion into deliberately chosen words and phrases, along with other narrative techniques, to create an impactful story.

In telling the boy’s story, it is possible to center it around—as the speaker of the poem does—the idea that the boy is brimming with potential and turned to breaking windows only out of frustration with the world around him that refused to let him make his place in it. He is worthy of compassion and should be provided with opportunity instead of punishment. He is an artist whose creativity has been thwarted. He “must create,” and his creation was “a work of art” and also “everything [he has] for [himself]” (Brooks, 1987).

The boy’s story lends itself to creating emotional impact far more than the prosecution’s story. The prosecution’s story would likely be centered on the importance of the rule of law. Although the boy may be worthy of sympathy, he still broke the law, and there must be consequences for such action. The boys’ feelings of frustration, while understandable, do not give him the right to destroy property of others. He appears well aware of that, as he is determined to “create,” and acknowledges that this creation comes from a “fidgety revenge” (Brooks, 1987). He admits that if he cannot create a “note” or “overture,” he will destroy and “desecrate[e]” (Brooks, 1987).

Reflecting on the Assignment

Overall, the assignment was a success, and I will use it again when I teach this course in the future. As students told the story of the case as the boy’s defense counsel, almost all of them effectively incorporated a man (boy) versus society conflict, emphasizing that great societal change was necessary as opposed to severe punishment for one individual caught up in a society desperately needing that change. As students told the story of the case as the prosecutor, they did so sensitively, with a focus on the simple facts of the case: a crime was committed, and breaking the law is inexcusable.

Their stories overall were quite compelling. Some students used language quite vividly to bring to life the story of the boy and his broken window. Many students’ writing was poetic in its own right. Students used imagery, metaphor, and rhetorical questions skillfully. It was clear that students based their stories on a critical reading of the poem based on the themes their stories centered around, and they were overall successful in integrating powerful words and phrases from the poem to enhance their stories.

I had students provide anonymous reflections on the assignment after they had submitted it. Almost all students (apart from a couple who stated they did not care for poetry) found value in the assignment. Specifically, many students found the exercise helpful in understanding why it is important to read critically, and how critically reading can lead to a deeper understanding of a text and its various meanings. Further, several students reflected that the assignment aided them in appreciating how to consider and articulate different perspectives on one set of facts. Finally, several students stated that they enjoyed the freedom the assignment allowed to structure their writing creatively and make rhetorical choices in telling their stories.

After my own reflection on the assignment, several things stand out regarding how I might reexamine some of the ways in which I teach legal writing. First, although most students effectively incorporated language from the poem into their stories, not all of them did. Those who did so were able to weave words and phrases from the poem into their stories to augment

their power. This aligns with what I see in students' traditional legal writing; by the middle of the second semester, many students can effectively integrate quotations from legal authority into their own writing. Some students, however, still struggle with skillfully integrating quoted material, or how to effectively cite to specific language from legal authority at all. After this assignment, I suspect the issue is not one of substance so much as it is one of skill. I think students recognize the importance of supporting their analysis with legal authority, but not all of them feel comfortable selecting the best quotation and determining where and how to place it in their own text. Thus, I would like to consider new ways to introduce students to the skills involved in effectively incorporating authority and to allow them to practice these skills. In particular, I would like to really break down the mechanics of the process of selecting key language and then figuring out where and how to incorporate it. For example, I might provide students with an example of a strong paragraph explaining legal rules and have them examine, sentence by sentence, how the writer carefully selected and incorporated language from legal authority. I might also revise the case charts my students complete in their pre-writing phase. These charts have students delineate the important facts, holding, and reasoning of the precedent cases, and also record how the precedent case may be analogized to or distinguished from their case. It would be beneficial to add a "key language" column to this chart to prompt students to recognize and pull key phrases from the case that may be useful to incorporate into their own document.

Further, few students addressed the need for additional information. This could be, in part, due to the lack of time they felt they had to devote to the assignment. Perhaps they also felt that thinking about information that was not there was less important than analyzing the information that was there. Either way, this indicates to me that students need to practice analyzing facts in such a way that they consider what facts are missing. In traditional legal writing assignments, students are provided with the facts of the case, either in a case record or in an assignment memo. Their job is to cull the relevant facts from an existing universe of documents. In actual law practice, however, lawyers must uncover the facts from all possible sources. In order to discover facts, lawyers must know what questions to ask and what information to seek. That knowledge comes from understanding what information is known, recognizing the gaps in that information, and considering all of this in the context of the relevant legal framework.

Although reading a poem is not, of course, the same as interviewing a client, it is closer to the process of uncovering facts than a traditional law school assignment where facts are provided; it requires students to look beyond what is being said to what is not said, and to discover the emotional components hidden within the client's story. In that way, it simulates the skills needed to conduct a client interview and craft discovery requests.

In the discovery process, trial lawyers must gather "tangible pieces of evidence and witnesses" in order to "[s]et the right scene" for the story they wish to tell at trial (Bodiford, 2014, p. *1). The story that will be told at trial begins to take shape at the very beginning of the case: "Trial lawyers have to prepare a case with the ultimate presentation of the client's story in mind" (Bodiford, 2014, p. *1). While lawyers often begin with "a preliminary legal theory that puts the client's version of facts into existing structures of legal claims and defenses," this "preliminary analysis is only the beginning of the process" (Kruse, 2013, p. 18). In the factual investigation that follows, "lawyers are likely to confront the factual ambiguity and conflict caused by imperfect recollection, omission, and conscious or unconscious shaping of reality to align with self-interests" (Kruse, 2013, p. 19). Then, "[t]o be effective advocates, lawyers also need to know how to weave facts and inferences into persuasive stories" (Kruse, 2013, p. 19). Although a first-year legal writing classroom necessarily has limitations regarding students' ability to uncover facts, this assignment is an effective way to have students begin to consider

how to “make[] decisions... as to what the relevant facts are which support the contentions” the lawyer will make (Ordovery, 1991, p. 818).

Further, the next time I use this assignment I will add another component to the writing portion, asking students to consider how a jury might respond to the stories each side tells about the case. This next step—asking students to think about the impact their writing has on the audience—may be a powerful tool in having students contemplate how the choices they make in constructing their stories will be received by the reader or listener. It would also provide a concrete link to introducing or affirming Gopen’s reader expectation theory.

The most significant observation I made occurred while I was reading the students’ stories and noting how, overall, their writing style was different from the writing I had seen all year. Their writing was universally clearer and more fluid than in the legal writing assignments they had completed thus far. The writing sounded like it was written by a competent writer with a command of language as opposed to a novice lawyer (or perplexed law student) grappling with form and substance. When I told my classes this as I returned their stories, they were not at all surprised. The consensus was that it was freeing to write in this way because they did not feel as though their writing had to fit into a specific structure.

I teach students the general pattern for legal analysis, which has many acronyms including IRAC and CREAC, to name a few. Regardless of what it is called, “a useful pattern for analyzing a simple legal issue often has the following structure: (1) Identify and explain the applicable rule of law; (2) Examine how the rule is applied in the relevant precedents; (3) Apply the law to the facts of your case and compare the precedents; (4) Present counterarguments; (5) Evaluate the parties’ arguments and conclude on the issue” (Shapo et al., 2018, p. 121). I teach students this analytical structure, but attempt to do so in as loose a framework as possible, emphasizing how each component of the analysis is malleable depending on audience, purpose, and the applicable law rather than providing students with a formula to follow unfailingly. Now, I wonder if I can introduce the pattern for legal analysis in an even less rigid way, perhaps by emphasizing how *any* good piece of analytical writing would have the components the pattern contains.

This assignment can be adapted to be used in classrooms beyond the legal writing one. It would be well-placed in a Law and Literature type of class, in either an undergraduate setting or in a law school context. Baron (1999), in discussing the “three strands” of the law and literature movement, characterizes the first strand as “humanist,” meaning that “[l]iterature is needed to humanize lawyers” (p. 1064). There are several arguments in support of this facet of the law and literature movement. First, “lawyers need to know more about human nature—especially about people different from themselves— than they can learn on their own” (Baron, 1999, p. 1064). Next, reading literature can rectify the imbalance many lawyers have “rely[ing] excessively on abstract reason over forms of understanding that are emotional, intuitive, and concrete” (Baron, 1999, p. 1064). Finally, literature can assist lawyers in learning to “make[] moral judgments” (Baron, 1999, p. 1064). The assignment falls squarely within this theory of law and literature.

Further, the assignment could be adapted to other literary genres and texts. For example, students could tell both sides of the story of Mrs. Wright from Susan Glaspell’s play *Trifles*, of Sherman McCoy from Tom Wolfe’s novel *The Bonfire of the Vanities*, or of the Misfit from Flannery O’Connor’s short story “A Good Man is Hard to Find.”

In addition, this assignment would be valuable to incorporate in a criminal law class, in either the undergraduate or law school context. The instructor could provide students with a vandalism statute under which the boy is being charged, and thus connect the exercise more closely with criminal law and legal advocacy. If a statute were to be provided, the assignment could also ask students to consider how telling the story one way or another could persuade a decision-maker that the statutory elements are or are not satisfied.

Conclusion

Learning to write like a lawyer is no simple undertaking. Giving students the opportunity to think about how language and stories transcend genres is valuable because—at some level—good writing is good writing, regardless of its audience and purpose. As lawyers, students will have to operate within customary analytical structures. But they can take the features of the good writing they produced for this assignment and bring them back to the more structured contexts in which lawyers usually have to write.

ASSIGNMENT

Narrative Exercise

What is a story?

A story is an account of a character running into a conflict and the conflict being resolved.² Broadly speaking, “[a]ll storytelling from the beginning of recorded time is based on somebody wanting something, facing obstacles, not getting it, trying to get it, trying to overcome obstacles, and finally getting or not getting what he wanted.”³

What are the elements of a story?

- Characters
- Conflict
- Resolution
- Organization / Plot
- Point of view⁴

What is narrative theory?

Narrative theory is the study of how stories are constructed.⁵ It considers the following: “What are the elements of this story? What choices must the author make about these elements? What process does the author go through to make these choices? By choosing what goes into the story, what has the author left out? How is the story different as a result of those choices? Have those choices been made intentionally or reflexively? What factors influence the author in making those choices?”⁶

What is storytelling?

Storytelling is the art of telling a story. It is the “craft of constructing stories” with “intention and reflection.”⁷

What does this all have to do with being a lawyer?

Good lawyers are good storytellers. Lawyers “are not only hearers and tellers of stories, but also, and perhaps most important, constructors of stories.”⁸ Consider the following:

Lawyers are particular kinds of storytellers, influenced by variables unique to their role as tellers of their clients’ stories. In that role, as makers of legal arguments, we decide what story to tell and how to tell it “guided by some vision of what matters.” Put another way, to figure out what story to tell and how to tell it, the lawyer must weigh three substantive factors, the same factors that make up the theory of the case: the law, the facts, and the client’s goals. In addition, of course, the lawyer

must consider contextual factors, *e.g.*, the audience, the forum, the availability of resources, and the personalities of the client and other potential supporting or detracting characters in the story. The lawyer must also consider particular cultural norms and values in deciding among different stories and ways of telling them. And finally, the lawyer must consider factors personal to himself in determining what story to tell and how to tell it: is he comfortable in a courtroom, can he pull off a humorous narrative, does he do better in a more formal or less formal setting, does the client’s situation raise personal moral or ethical concerns?

Storytelling is pervasive. When a lawyer drafts a statement of facts, for example, she does not simply record the known universe of “relevant” facts in an interesting and persuasive way. Indeed, there is no such thing as an absolutely neutral description of the facts. As lawyers, we engage in fact-gathering repeatedly—at initial client interviews, after we’ve done some legal research, in anticipation of the other side’s argument—and then we “pick and choose from available facts to present a picture of what happened” that most accurately reflects our sense of what matters. And the other lawyers involved do exactly the same thing, with exactly the same pool of facts, but emphasizing different details, drawing different inferences, and thus drawing quite a different picture.⁹

Therefore, “[u]nderstanding storytelling is a way to understand persuasion. We persuade by telling stories that decision makers believe and adopt. Narrative theory is so compelling partly because stories are elemental to human interaction—we recognize and react to them instinctively.”¹⁰ In sum, thinking about narrative theory and storytelling “can help students understand that there is no such things as the monolithic Law, rules that are simply discovered or found out there somewhere. Instead, law comprises a series of stories—ever changing—and those stories are constructed not by some objective external Decision Maker in the Sky,” but by lawyers, lawyers who were once law students.”¹¹

The Exercise

Read and analyze Gwendolyn Brooks’ poem “Boy Breaking Glass.” We will discuss the poem in class today.

Then, assume that the Boy in “Boy Breaking Glass” is being prosecuted for his vandalism. **First, how would you tell the story of the case if you were the Boy’s defense attorney? Second, how would you tell the story of the case if you were the Prosecution?** In responding to these two questions, you may also write about what additional information each side might seek in developing the story.

Your responses to the above two questions will not be long (you will likely write only one paragraph per side). Be sure, however, that your stories are rooted in / supported by the text of the poem. You do not need to—and may not—do any research or consult any outside sources to complete this exercise. As you think about the story you will tell for each side—the Boy and the Prosecution—consider the following from each side’s perspective:

- What happened and why?
- What should the fair outcome be?
- What is the human element to what happened?
- How can you tell your client’s story to achieve justice?

Notes

¹A copy of Brooks’s poem is available on the Poetry Foundation website.

²See Foley, Brian J. and Robbins, Ruth Ann, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Sections*, 32 RUTGERS L. REV. 459, 466 (2001).

³*Id.* (quoting Stein, Sol, *Stein on Writing: A Master Editor of Some of the Most Successful Writers of Our Century Shares his Craft Techniques and Strategies*, 224 (1995)).

⁴*See id.*

⁵See Grose, Carolyn, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ALWD 37, 39 (2010).

⁶*Id.* at 39-40.

⁷*Id.* at 40.

⁸*Id.* at 40.

⁹*Id.* at 44.

¹⁰*See id.* at 46.

¹¹*See id.* at 48.

Supplementary Material

For supplementary material accompanying this paper, including a PDF facsimile of the assignment description formatted as the author(s) presented it to students, please visit <https://doi.org/10.31719/pjaw.v8i2.191>.

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