

# Why Write?

James R. Elkins

Someone asked me why a surgeon would write. Why, when the shelves are already too full? They sag under the deadweight of books. . . . A surgeon should abstain. A surgeon, whose fingers are more at home in the steamy gullies of the body than they are tapping the dry keys of a typewriter. A surgeon, who feels the slow slide of intestines against the back of his hand and is no more alarmed than were a family of snakes taking their comfort from such an indolent rubbing. A surgeon, who palms the human heart as though it were some captured bird.

Why should he write? Is it vanity that urges him? There is glory enough in the knife. Is it for money? One can make too much money. No. It is to search for some meaning in the ritual of surgery, which is at once murderous, painful, healing, and full of love. It is a devilish hard thing to transmit—to find, even. Perhaps if one were to cut out a heart, a lobe of the liver, a single convolution of the brain, and paste it to a page, it would speak with more eloquence than all the words of Balzac. Such a piece would need no literary style, no mass of erudition or history, but in its very shape and feel would tell all the frailty and strength, the despair and nobility of man.

—Richard Selzer<sup>1</sup>

In every faculty community, there are teachers who write and those who do not.<sup>2</sup> Those who do not write say, “My focus is on teaching. Isn’t that where it should be?” On the promise made to write when they were invited to join the faculty, there is silence. The conversation about and between writers and non-writers is a conversation that does not take place, a conversation no one seems to know how to initiate. Admittedly, the conversation would be painful; it threatens a community that embraces broken promises.

I am a member of a faculty and a larger world of law teachers that can, in the form of a crude heuristic, be divided into competing camps. At one time, I would have identified the two camps as laboring under the labels

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1. Richard Selzer, *Mortal Lessons: Notes on the Art of Surgery* 15-16 (Simon & Schuster 1976).
2. “[M]any law teachers—tenure safely earned years before—perform a strange obeisance to their scholarly ideals by writing little or nothing at all.” Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 *Mich. L. Rev.* 2025, 2026 (1993).

practical and theoretical. As a law student in the late 1960s and early 1970s, I identified teachers by whether they had a black-letter law or a philosophical orientation (assuming erroneously that black-letter law pedagogy is not itself a philosophy). William Twining, in a widely read lecture, “Pericles and the Plumber,”<sup>3</sup> addressed these different pedagogical orientations. I have now come to a different formulation of the two camps created by a structural fault-line that all too often distinguishes training and education. There are more than a few versions of the two camps: teachers who continue to practice law and those who do not; teachers who pursue a Socratic-style and those who lecture more than they pose questions; teachers who devote their life to teaching and those whose energies are expended elsewhere; law teachers who write and those who do not. In thinking about these different orientations, we locate ourselves as writers and locate ourselves in relation to the training/education fault-line. Law teachers dance to the beat of different drummers. We are driven by different visions of legal education as we adopt, adapt, and advocate a law school’s regime of training.

I teach and I write. I write and I teach. I write and teach what I read. I’ve never managed to fully compartmentalize teaching and writing. Writing and teaching have always, for me, been joined at the hip. I became a writer by way of teaching, then I found that I teach to write, teach to learn, and I ask students to join me in that effort. I write what I teach. I teach what I write. I don’t see writing being separate and apart from teaching itself.

I write to give substance to my teaching, to define myself as a teacher. When I find I can’t write about something, I’m suspicious of its use in the classroom. If I can’t walk the ideas around the block for the neighbors to see, I’m selling wares to students I didn’t know enough and I’m little more than a snake-oil salesman. Writing keeps me honest.

When we talk about teachers who write, James Boyd White reminds us that there are vastly different kinds of writing. White makes the point this way: “It may look as though we are all doing the same thing, as we huddle over our typewriters or computers, producing work called articles or books, but we are in fact often doing very different things . . . .”<sup>4</sup> Writing is a different kind of enterprise for different teachers.

This difference in who we are as writers shapes why we write, and can be traced to the differences in who we are as readers.

Despite surface similarities, reading, like writing, is not the same for all of us, and the differences deserve attention and respect. We are moved to read, and to choose what we read, by different questions and hopes . . . . [The deepest meaning of any text] is not in the text itself, nor even in the response of an

3. William Twining, *Law in Context: Enlarging a Discipline* 63-88 (Clarendon Press 1997).

4. James Boyd White, *Why I Write*, 53 *Wash. & Lee L. Rev.* 1021, 1022 (1996).

ideal reader; it is in the place the text holds in our actual and individual lives, in the kind of life it stimulates and the kind of transformations it works there.<sup>5</sup>

White relates writing to who we are as readers. “[A]n understanding of what reading is, or can be, seems to me an essential part of a writer’s equipment, for it sharpens one’s sense of the possibilities inherent in writing itself. Perhaps it is the first thing a writer needs.”<sup>6</sup> For White, it has been, he says, “a love of certain texts” and the demands they make on him as a reader that has shaped the why of his writing.<sup>7</sup>

There are times when the little tributaries found in my reading and teaching feed a common stream. It’s the summer of 2009, an uneventful summer in so many thankful ways. I’m working on a manuscript about legal education, a book composed of old work and yet-unpublished writings about legal education. The making of this book seems to have gone on for an elusive forever. Some days, for relief from relentless gazing at my own words, I read what others have written about legal education. I fall into the rabbit hole of thinking, as I read, that everything that can be said about legal education has undoubtedly already been said. My thinking, my critique, of legal education is unoriginal. Others have plowed this big field, and they’ve plowed it fence row to fence row. The more I read, the more I see how I’m traveling a well-paved road. And yet . . . what is there to do, but carry on, say what I have to say, speak to what I know based on what I’ve seen and on what I’ve tried to teach.

I doggedly read about legal education and a note of sadness creeps up on me. This sadness comes not from getting too late to the party to have a glass of wine or two, but that so much of what is written about legal education is served up in lifeless prose. Law review style writing that I once read without questioning no longer seems bearable. I keep reading. Is it a sense of obligation? Some as yet unresolved deep need? A streak of perversity? The obsessive idea that I should read everything about legal education? Quixotic and impossible, I read on, and yes, I try to read everything. I begin to feel, now, like the problem I write about: Legal education is a ruthless machine. It seems, at times, to run without gasoline. It’s a fiction founded on perpetual motion; it just keeps going and going. And, part of the fuel for this machine is the critique of legal education. Students sign up to be a part of the machine, and they do it with high hope, exhilarated for a few weeks or months with

5. *Id.*

6. *Id.* Robert Scholes makes a stronger claim: “I produce texts, therefore I am, and to some extent I am the texts that I produce.” Robert Scholes, *Semiotics and Interpretation* 4 (Yale Univ. Press 1982).

7. *Id.* John Ayer has observed that the “scholarly project” within which the turn to narrative has taken place rests on the conviction that “we are what we imagine ourselves to be.” The question for the law teacher, as for any of us, is: “How do we create, negotiate, identify, these imaginative worlds in which we live? What are the implications of different imaginative choices? How do they enrich, and how impoverish, our lives and the lives of others?” John D. Ayer, *The Very Idea of “Law and Literature,”* 85 *Mich. L. Rev.* 895, 897 (1987) (book review).

what they are doing, only to find the reality of law school—the reading, the work, the competition, the anxiety—enough to take the bounce out of their step, to cast doubt on their hopeful plans for the future. But it all keeps on going, the motion becomes the It of our existence. What choice do we have? We go on. My reading about legal education goes on.

I should confess that I've not painted the entire canvas here. I've got a massive table stacked with articles on legal education; I read them one by one and toss them in the trashcan. Then, in the reading and the trashing, I create a small pile of the work of colleagues I admire. In truth, it is quite remarkable work, the gloss that hides the dull, the elegant that gets lost amidst the mundane. I'm left, at times, with conflicted feelings: sadness about the ever so forgettable writing about legal education and the pleasure in surrounding myself with the small body of work that reminds me that there is life to be found in isolated places, and the isolated men and women stranded in Edward Hopper's paintings.

Sadness and quiet celebration pull me back and push me forward. All I know to do is "play it as it lays." I have the good fortune to return to the writings of Richard K. Neumann, Jr., where I find a phrase that stays with me. Neumann talks about "deviant traditions of education," a term he adopts from Donald Schön's *Educating the Reflective Practitioner*.<sup>8</sup> Newman doesn't have much to say about these deviant traditions; in fact, he says so little I found myself silently begging for more.<sup>9</sup> I don't mind reading for days to find a little nugget like Neumann has laid before me. Neumann might well be disappointed to think that he had a captive reader who walked away from his fine survey of Donald Schön's work with such a small fragment. But I wonder, thinking about this experience, whether we might not at times have to settle for a fragment or two. When I read I am an archaeologist, digging in the ruins for the fragments I can use to bolster my thinking, my writing, my teaching.

I took up with this archaeological metaphor a few years when I was trying to write about Ruthann Robson's work—an impressive lifetime of writing in many genres—and found that the only way I could get my mind around her

8. See Richard K. Neumann, Jr., Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education, 6 *Clinical L. Rev.* 401, 414 (2000).
9. What Neumann does say is this: "Those who teach the normative curricula—in law schools, the doctrinal courses—greatly overestimate the amount of professional thinking their students can learn in those conventional settings." *Id.* Neumann observes that "[m]any normative curriculum teachers might try to convey more than information but succeed only haphazardly. . . . Very few [teachers] realize that the most important cause of failure is the normative curriculum itself." *Id.* What I find most delicious is Neumann's assertion that the "deviant traditions of instruction" found in professional schools—I assume Neumann would include law schools here—"succeed to one degree or another in teaching professional training." *Id.*

It should also be noted that, "[c]ritics of the enterprise of law, legalism, or legal thought have been rather systematically marginalized throughout the history of the American academy." Paul E. Campos, Pierre Schlag & Steven D. Smith, *Against the Law* 20 (Duke Univ. Press 1996).

work was to treat it as if what I had found was not whole, intact, and complete but lay before me in ruins. There was too much of Ruthann's work to take on as a whole; I had no hope of fully describing the great harvest of her work, every pot, pan, and plate that she had so carefully crafted in her writings. Facing Ruthann's writings as an archaeologist, I began to look for fragments within the larger body of her work.<sup>10</sup> If you've had the good fortune to visit any of the ancient Greek ruins, and find the ruins themselves magnificent, you'll know exactly what I was after in writing about Ruthann Robson's work.

I write about legal education, about teaching, about what it means to be a student and a lawyer. Why do I write this stuff? I've been reading about legal education for decades, so long that I sometimes entertain the fanciful notion that I have read everything that has even been written about legal education. I can see the mania, and the obsessional quality in this line of thinking. I confess to being compulsive when it comes to certain kinds of reading. I want to know what's out there, who is doing it, and how they do it. I want to know what my colleagues are saying about this world that I inhabit as a teacher.

The more I read, the more I know I have something to say. It's not always that I get around to saying it, or say it nearly as I imagine I will. Sometimes I have a particular audience in mind: my students, sometimes colleagues who I suspect might stumble upon something I have written, a stranger who finds my work and is surprised by what he finds. More often, I write with the expectation that there is no one who will read what I write. I assume that what I write will not change the world. I write knowing that I may never get it right.

I had a colleague, I'll call him Randall, who proposed a faculty colloquium on the question of why we write.<sup>11</sup> Randy wanted to address his growing uneasiness in having produced a solid body of scholarly writing that had received little attention. Randy had staked out white-collar crime as his field of scholarly interest and had published several long, detailed articles on the subject. Randy was viewed as a productive legal scholar; I think he identified himself this way as well. At the faculty colloquium, Randy told us nothing that would startle us. He wrote, he wanted us to know, for judges and policy-makers. It was evident that he was peeved that no one paid attention to his articles. His various policy proposals had gone nowhere. Randy had made himself an expert in white-collar crime, but his ideas didn't have the traction he thought they deserved. He now squarely faced the question: Why write if the audience isn't paying attention?

The odd note in Randy's presentation was his assumption that we all write for the same reason. We write, according to this assumption, to help judges and legislators improve the law. Colleagues seemed to relish the opportunity to give Randy, and each other, conventional advice: We need, they said, to focus on how we can be more persuasive in our scholarly writings. We need to learn how to pitch our writing to policy-makers. We need to get to know

10. See James R. Elkins, *A Poetics—of and for—Ruthann Robson*, 8 *N.Y.C. L. Rev.* 363 (2005).

11. I have changed biographical details to protect my colleagues' identity.

policy-makers so we can offer them our expertise. We need to sell our ideas; we need to sell ourselves. We need to become better lobbyists. We should be more pro-active in getting our scholarly work in the hands of its intended audience. Listening to these comments of my colleagues, I began to experience the low-level nausea that comes over me when I hear so much conventional wisdom feasted on by otherwise intelligent colleagues.

Randy, seeking friendly advice, may have gotten what he sought. I wouldn't have been surprised to hear Randy say, after his presentation, "I have the good fortune of having fine colleagues; they are trying to offer helpful advice." But I had the sense that Randy might be after more than even he might want to admit. Randy had labored long and hard on his law review articles; they weren't getting him where he wanted to go. There wasn't a colleague in the room willing to focus on Randy as a writer, a writer with a mini-crisis on his hands. (I'm not at all sure that Randy saw himself as a writer.) My response to Randy's situation was that he faced a choice: He could redouble his efforts to impress upon his audience the practical value of his scholarly work, or, he could reimagine himself as a writer, redefining his sense of purpose, and devise a new answer to his question, why write?

I begin with the very proposition that Randy sees as the nemesis of his writing. No one reads what I write. For some reason that doesn't bother me. Maybe it should. Randy wants his writing to change the world. I write about legal education with the idea that legal education is unlikely to come around any time soon to reflect my backroads thinking. Randy would have a ready response. "Surely, Jim, when you write about legal education, you're trying to get others to follow your lead, to teach the way you do, to teach more professional socialization courses, and when they teach them, to teach with the focus you advocate." I tell Randy, "I'm not sure that sounds right. If I ever had in mind changing one or another aspect of legal education, I learned I needed a different reason to continue writing. If I ever had a notion that I wrote to change the world—and I'm not sure I ever did—it has been stored away on a high shelf in the closet."

I want my writing to be out and about in the world, to circulate, to be available; I want to know that a reader might find what I write and be pleased with what he reads, but I don't have any expectation that anyone is going to reform legal education based on my backroads tour among the tall buildings of legal education.

"Let me see if I've heard you right," Randy asks. "Are you writing just to be doing it, just for the hell of it?" I don't want to be flippant when I tell Randy, "I want to think there is an intrinsic value in writing; 'just doing it' might in truth be reason enough to do it." I don't know whether Randy is going to understand this argument, this claim. He's a man of intense intelligence, but he's smart in ways that sometimes blinds him to the kind of claim I am making. I'm not sure I know how to explain what it means to say that a teacher might write for the intrinsic value of writing.



I end up having another go at this point, now from a slightly different angle. Maybe I do write “just for the hell of it.”<sup>12</sup> Maybe I write for the hell of it and then try to find in what I write something I can teach. What I’m trying to do in my writing is find out what I can about this small world I inhabit with students and about my place in this world. I tell Randy, “I don’t write to change the world but I do write to make an argument, to be part of the culture of argument that arises around the training/education fault-line in legal education. I want to think that I have something to say about this fault-line and about how I’ve tried to live with it.”

Robert Pirsig, faced with the problem of telling the readers of *Zen and the Art of Motorcycle Maintenance* the nature of his between-the-genres book, settled on the idea that it could be thought of as something akin to a Chautauqua, “the traveling tent-show . . . that used to move across America . . . [with] popular talks intended to edify and entertain.” Pirsig contends that he was not trying to map out any “new channels of consciousness,” but had in mind trying to deal with the old channels “that have become silted in with the debris of thoughts grown stale and platitudes too often repeated.”<sup>13</sup> Maybe the answer to the “why write” question, in my case, is the one Pirsig locates in the old Chautauquas—“edify and entertain.” The Chautauqua is attractive for those of us who do not identify ourselves as scholars or our writing as scholarship. I confess that these terms—scholar and scholarship—have always left me feeling a little light-headed and unsteady on my feet. What I want to claim is not that I am a scholar but a teacher who tries, for better and worse, to write.

Why write? I write for a sense of belonging, a sense that by writing I have made myself a part of a community. Randy, a quizzical look on his face, is skeptical about my writer’s sense of community. He tells me, “it sounds more metaphorical than real.” “No,” I tell Randy, “it’s quite real. Metaphors have

12. I check, via Google, if I can find writers who admit that they write “just for the hell of it.” A webpage devoted to the National Novel Writing Month offers the observation that “Doing something just for the hell of it is a wonderful antidote to all the chores and ‘must-dos’ of daily life” (National Novel Writing Month, <http://2007.nanowrimo.org/eng/node/402759>). This sounds like writing that runs against the grain, against the notion of writing as necessity. The online Free Dictionary suggests that the expression “for the hell of it” means doing something for the fun of it. Yale Kamisar disagrees. “Taking your child or grandchild to the circus may be fun. Playing tennis on a cool summer afternoon may be fun. A lot of things may be fun. But writing is not one of them. Writing is work and very good writing is very hard work.” Yale Kamisar, *Why I Write (And Why I Think Law Professors Generally Should Write)*, 41 San Diego L. Rev. 1747, 1751 (2004). Kamisar quotes George Orwell on his experience of writing a book: “Writing a book is a horrible, exhausting struggle, like a long bout of some painful illness. One would never undertake such a thing if one were not driven on by some demon whom one can neither resist nor understand. For all one knows that demon is simply the same instinct that makes a baby squall for attention.” *Id.* (citing George Orwell, *Why I Write*, in *The Orwell Reader* 390, 395 (Harcourt, Brace & Co. 1956)). I want to believe that writing for the hell of it can be therapeutic, the writer’s equivalent of psychotherapy’s talking cure. We talk and/or write our way through something so we can sort it out and locate our own perspective.

13. Robert Pirsig, *Zen and the Art of Motorcycle Maintenance: An Inquiry Into Values* 15-16 (William Morrow & Co. 1974).

their own reality. There's a reality in one's identification as a writer. This claim to being a part of a community is not just rhetoric; thinking of myself as a writer among writers makes a serious demand on me. The sense of being a writer is real; it brings with it a kind of life—a reason to write.”

Randy contends there are simply too many writers, too many kinds of writing, and too many genres of writing for the idea of a community of writers to have any bite to it. “It’s a grand illusion. It’s just an airy abstraction. It’s supposition; it’s metaphor gone wild.”

I try to defend the idea, knowing as I do that inviting myself to be a part of a community of writers by identifying myself as a writer requires explanation. I try to come up with an analogy of some kind that Randy might find appealing. “Isn’t this idea of a community of writers something akin to what we have in mind when we recruit new faculty members?” I ask Randy. “We want new colleagues to write; we require them to write in order to get tenure. We expect this writing to be not just a part of the work that we do as teachers, but of the lives we live as teachers. We write to know who belongs in a community of teachers and who doesn’t. If the faculty is a community, as I think it is, then joining this community is premised on a promise: I will write. Being a teacher is all about belonging and community. I write to belong; I write to define myself as a teacher, a colleague, a craftsman.”<sup>14</sup>

14. The sociologist C. Wright Mills observed that the craft of scholarly writing

is a choice of how to live as well as a choice of career; whether he knows it or not, the intellectual workman forms his own self as he works toward the perfection of his craft; to realize his own potentialities, and any opportunities that come his way, he constructs a character which has as its core the qualities of the good workman.

What this means is that you must learn to use your life experience in your intellectual work: continually to examine and interpret it. In this sense, craftsmanship is the center of yourself and you are personally involved in every intellectual product upon which you may work.

C. Wright Mills, *The Sociological Imagination* 196 (Oxford Univ. Press 1959).