

Process, Not Product

Why They Can't Write: Killing the Five-Paragraph

Essay and Other Necessities

John Warner (Johns Hopkins University Press 2018), 271 pages

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My students are in law school; why can't they write?!

In his book, *Why They Can't Write*, John Warner answers that very question: "They're doing exactly what we've trained them to do; that's the problem."¹

According to Warner, "Writing is thinking,"² but our elementary-through-secondary education system's approach to writing has removed the thinking aspect from the process. "Instead, much of the writing students are asked to do in school is not writing so much as an *imitation* of writing, creating an artifact resembling writing which is not, in fact, the product of a robust, flexible writing process."³

Though he expressly targets the five-paragraph essay,⁴ Warner also takes a deep dive into the educational culture of assessment and standardization as a root cause of writing degradation. That culture requires that we assess students to determine if schools are successfully teaching; and, to conduct such mass assessment effectively, we must standardize the material. But this approach has thrown students into a "curiosity crisis,"⁵ where they are taught a method of performance (e.g., the five-paragraph

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¹ JOHN WARNER, *WHY THEY CAN'T WRITE: KILLING THE FIVE-PARAGRAPH ESSAY AND OTHER NECESSITIES 2* (2018).

² *Id.* at 145.

³ *Id.* at 5.

⁴ "The five-paragraph essay format is a guide that helps writers structure an essay. It consists of one introductory paragraph, three body paragraphs for support, and one concluding paragraph." Matt Ellis, *How to Write a Five-Paragraph Essay, With Outlines and an Example*, GRAMMARLY (last updated Apr. 14, 2023), <https://www.grammarly.com/blog/five-paragraph-essay/>.

⁵ WARNER, *supra* note 1, at 36.

essay), rather than the thought-process and decisionmaking required for the task (e.g., why we use topic sentences, why some words are better in a particular context than others, etc.). Teaching students to perform, rather than think, creates a deleterious drain on student engagement. Students then view school as a “gauntlet to be run,”⁶ rather than a place to explore and grow.⁷ And if, as Warner suggests, writing is thinking, standardization of writing has turned our students into thoughtless drones.

Warner also examines well-meaning but ineffective attempts to solve the student engagement problem through educational fads, like emphasizing student self-control and compliance, and technological hype, like massive open online courses and adaptive software. But he astutely notes that these fads and hype favor a quick fix while tending to “ignore[] the vital role of intrinsic motivation in engendering meaningful and lasting development.”⁸

Though the book was published before OpenAI’s release of ChatGPT, it contains some very prescient thoughts that are even more crucial for educators in the face of generative AI.⁹ If students are not engaged, they lack intrinsic motivation to learn, which makes reliance on machine-generated writing that much more appealing, especially when the technology is advanced enough to pass law school courses and even the bar exam.¹⁰ And, due to the lack of engagement in earlier phases of education, any resulting reliance on AI-generated content will likely be made without the necessary critical analysis to evaluate its output.

While half the book is devoted to identifying why our students can’t write, the other half is devoted to ways to increase student engagement and reconnect students with their intrinsic motivation to learn. And, even though Warner is not a legal writing professor, the beauty of Warner’s proposed solutions is that they can be applied in any educational environment, from the legal writing classroom to training programs for new associates or law clerks.

6 *Id.* at 37.

7 Warner talks about the effect this crisis has on student mental health, especially in higher education, where rates of student depression and anxiety are soaring. *Id.* at 40.

8 *Id.* at 77. As Warner notes, “When the chief problems of education are alienation, lack of engagement, and anxiety, where is the value in making students talk to black boxes that count in 0’s and 1’s?” *Id.* at 102–03.

9 While this particular book was not written with generative AI in mind, Warner is working on a new book addressing reading and writing in the age of AI, which should be available in early 2025. John Warner, *Writing is Thinking*, THE BIBLIORACLE RECOMMENDS (Sept. 24, 2023), <https://biblioracle.substack.com/p/writing-is-thinking>. Warner is also the host of a Master Course on *Teaching Writing in an Artificial Intelligence World*. See *A Master Course from John Warner: Teaching Writing In an Artificial Intelligence World*, <https://www.whyytheycantwrite.com/> (last visited May 12, 2024).

10 Jonathan H. Choi, Kristin E. Hickman, Amy B. Monahan, & Daniel Schwarcz, *ChatGPT Goes to Law School*, 71 J. LEGAL EDUC. 387 (2022).

Focusing on choice

At the outset, Warner notes that “[t]o write is to make choices, word by word, sentence by sentence, paragraph by paragraph.”¹¹ And, unlike formulaic writing structures developed for ease of assessment, this decisionmaking process requires critical thinking on the part of the writer as well as understanding of the subject, the audience, and the purpose of the written work.¹² To accomplish the transition from writing as a formula to writing as choice, Warner offers several suggestions.

A. Choice in language

He first proposes that we shift the focus from grammar and sentence structure to the underlying ideas the writer is trying to convey.¹³ He notes that, “[w]hen experienced writers struggle over sentences[,] the battle is not about ‘correctness,’ as we teach developing writers, but in lassoing the words that best express the idea.”¹⁴ To convey the effect of word choice, Warner presents students with different versions of a sentence and engages them in a discussion of their responses to the different language choices. Two of the sentences are:

1. I have smelled what suntan lotion smells like spread over 21000 pounds of hot flesh.
2. I have smelled what suntan lotion smells like spread over 21000 pounds of hot skin.¹⁵

In his experience, students “[u]niversally . . . agree ‘skin’ has less impact and ‘flesh’ is much grosser.”¹⁶

In legal writing, we are concerned with not only word choice but also sentence structure and overall meaning. Warner’s philosophy that requiring students to understand grammar and sentence structure before writing “gets writing backward”¹⁷ is applicable in the legal writing classroom as well. Perhaps instead of drilling grammar rules into the students through outside-the-classroom lessons, we should be asking

11 WARNER, *supra* note 1, at 5.

12 *Id.*

13 *Id.* at 144.

14 *Id.*

15 *Id.* at 208.

16 *Id.* at 209.

17 *Id.* at 144.

them to analyze in-class examples with misplaced commas or modifiers to show them how these errors change the entire meaning of sentences and, thus, motivate students to understand the rules for themselves and improve their own communication abilities. As Warner observes, when writers “have an idea worth expressing, the desire to share it provides the necessary intrinsic motivation to find the precise language to do so.”¹⁸

B. Choice in rhetorical situation

Warner next advocates that writing professors accept the fact that “we can’t teach every last thing.”¹⁹ Rather than focusing on the parameters of specific kinds of documents (e.g., essays, narratives, reviews), Warner suggests we focus on writing, generally, as a process—one where the writer asks questions about “audience, purpose, message, and genre . . . to fully understand the rhetorical situation.”²⁰ This approach has already been adopted by many legal writing professors who have made the shift from a document-based approach to a more process-based one.²¹ By teaching students to analyze a rhetorical situation, rather than simply mimic an example or template, we can ensure that students are actually writing and not simply imitating writing. And new associates and law clerks who understand the rhetorical situation will be able to produce more meaningful and effective legal briefs, memoranda, discovery documents, and draft opinions.

C. Choice in subject matter

To increase engagement, Warner suggests giving students agency over the topics of their written assignments (or at least basing assignments on a subject on which the students have existing knowledge).²² For law students and new legal writers, this likely means assigning them work on topics with which they have at least some familiarity or interest, because one component of writing knowledge is “knowledge of the subject being written about.”²³ But it also means giving them autonomy over the arguments raised and organization of the work, rather than trying to force

¹⁸ *Id.*

¹⁹ *Id.* at 158.

²⁰ *Id.*

²¹ See, e.g., Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351, 355 (2013) (“The genre discovery approach deliberately teaches familiar legal texts as rhetorically[] driven genres whose conventions are dictated by an audience’s needs and other rhetorical demands, rather than by abstract rules or templates.”).

²² WARNER, *supra* note 1, at 163–64.

²³ *Id.* at 26.

them into a pre-ordained structure with canned arguments. Then, they can focus on learning and building their writing skills rather than learning the elements of a cause of action or defense they have no interest in.

D. Choice in assessment

Warner pours a lot of attention into the importance of student reflection; providing formative (how to make this better), rather than summative (what was done wrong), feedback; and teaching students *why* we do certain things (such as citation), rather than just *how* those things are done.²⁴ In short, Warner advocates a shift in focus to the process of writing, rather than the end product. And emerging writers should be given the freedom and opportunity to make mistakes along the way: “My role as the instructor shouldn’t be to help students avoid potholes, but to help them understand what happened to put them into a pothole so they could avoid doing it again in the future.”²⁵

Recognizing that assessment of process is more challenging than assessment of product, Warner suggests creating a system of contract grading to increase intrinsic motivation. In a contract-grading scheme, a student’s grade is assessed against the values of the course. For example, in Warner’s composition courses, he provides his students multiple writing and feedback opportunities, consistent with the theory that writing improves through practice, and he then grades them based on the volume of work produced throughout the semester—in other words, “more work, better grade.”²⁶

He recognizes that his approach should not be imported wholesale, as “[d]ifferent courses and different student cohorts require different approaches.”²⁷ And he gives the example that a journalism course may place a greater emphasis on quality of the final product, rather than the quantity of writing produced, because producing a “print-ready copy . . . may be vital.”²⁸ But the end goal should be to align the grading contract requirements with the subject matter and values of the course. Thus, in legal writing, one skill we might emphasize is timely filing, as that is something expected of attorneys in practice. Therefore, we might create a contract-grading scheme that values timely submission of assignments.

²⁴ *Id.* at 171–75.

²⁵ *Id.* at 168.

²⁶ *Id.* at 216–17.

²⁷ *Id.* at 218.

²⁸ *Id.*

Though not directed toward legal writing instruction, Warner's book is thoroughly researched with hundreds of references supporting his arguments and theories about education, especially as it affects writing instruction. It contains usable exercises for anyone teaching writing of any kind, many of which can be adapted for the legal writing curriculum. As a legal writing professor, I found it accessible, relatable, and inspiring.²⁹

²⁹ Of particular note to some legal skills professors, in the acknowledgements section, Warner provides some insightful comments on his experience with academic freedom and status within higher educational institutions.