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ASU College of Law  
Creative Writing for Lawyers  
Course LAW791—Spring Semester 2004  
GLS: A Memoir on Transmutation from Law School to Lawyering.

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## The 3L Experience

For some of you, this is your last semester in law school. The beginning is in sight. You will end the school of law and begin the practice. In talking to 3L's over the years, I have heard a commonly expressed gripe about law school in general, and the third year in particular. The assumed solution seems to be, "*More reality, less cumbersome curricula.*"

For lack of a better handle, I will dub these frustrations, musings, and uncomfortable feelings about your last three years as "*constructivist law.*" Your reactions are not new; I heard them three eons ago when I was in law school. They are not particularly alarming; especially when posed against things like the "right" to advertise and the "right" to be paid a fee just like any other trade or job. They are not even scary. Scary is the young lawyer who believes that zealous advocacy is a substitute for candor in court. But these philosophical thoughts are *constructivist*; that is, they emphasize experience over learning.

Law reviews, moot courts, Socratic methodology, demanding writing assignments, hard-to-get grades, and most importantly, insistence on the rigor of scholarship, are legitimately demanded in all good law schools. None of that is easy but all of it is necessary. The goal of law school, with the exception

of my creative writing seminar, is to teach you the law, or at least where to *find* the law. The goal is not, and could not be, to teach you *how* to practice the law.

Practicing law, while largely an art, could not happen but for the science of the law, *i.e.*, the learning part. Most of you will soon engage in a little relief and a little rebellion. You will be glad to be out of the classroom and into the courtroom. That elation will soon give way to a real appreciation for knowing the law, or at least knowing where to find it. Your skills with clients, opposing counsel, judges, and senior partners will grow but will always be bottomed on how much law you know, and how quickly you can find it. As that *reality* dawns on you, you will revert and remember how much you really liked law school and how valuable it was, in retrospect.

"*Constructivist Law*" implies revisiting the past and reforming it into something different than what it was. I respectfully suggest you revisit what you have learned, remember it as it was, and practice it. You will likely find that constructive.

## Writing Fiction and the Law

As all of you know, I spend my summers in rural New Mexico writing fiction and ignoring the practice of law. In *Placitas*, we follow a simple rule of life, "*Don't be in such a hurry, man.*" I recommend it to you as you move from a unique time of life to one that is far more challenging. While most can learn the law, few can teach it and even fewer become great practioners. Those that do really *know* the law.

You are about to write to other lawyers, clients, judges, and witnesses on a real-life, real-time basis. Your writings will inform, plead, cajole, and amuse some people. The same document can also irritate and disappoint others. On occasion, you will accomplish nothing at all. Your letters, motions, briefs, and advocacy will be ignored. In literary circles, rejection slips are as common as adverse rulings from the bench are in the legal world. Get used to it.

There will be little opportunity for book-length work but short stories will be your daily fare. The collective imagination of clients, opponents, and judges releases itself quite easily in legal short stories. Remember that your short stories are non-fiction but are susceptible to the same editorial judgment and critique that the literary world thrives on. America has been a country of tall-tale tellers and swappers of anecdotes since the frontier began to move westward. The modern reality of law practice requires that you substitute "truth" for "tall," mix in a few legal anecdotes (called precedent). The result is a time-tested formula for acceptance.

## **Two Kinds of Lawyers**

At a core level, there are only two kinds of lawyers. Those who aspire only to inform and those who yearn to inspire. The artist in literature appeals to that part of our being that is not dependent on wisdom. The literary genius appeals to something in all of us that is a gift rather than an acquisition. Accordingly, we place literary artists on pedestals, the top of our reading stack and on best-seller lists. And so it is with great lawyers. They speak to clients, judges, and opposing counsel by appealing to their capacity for delight and wonder, to the sense of mystery that dominates the lives of many, and to the awful reality of pain and loss.

## **Remedy**

Speaking only for myself, I can say that everything I created as a lawyer has had its origin in a frame of mind and a situation in life. I never wrote a legal document because I had, as novelists say, found a good subject. I wrote because remedy is everything for the client and without good writing, any remedy is going to be a matter of luck, not skill. I can't say that my writing ever won a case because success is a complex blend of legal effort and raw fact. But I am quite sure that failed writings contributed more to my losses than any other single attribute.

Some famous wit once analogized writing to driving a car at night. You can only see as far as your headlights shine. That's true for fiction but the metaphor dims a bit for legal documents. Everything you write as a lawyer is drawn from the search for your client's remedy. That search must extend far beyond the beam of any piece of writing in the case. But if you write without looking down the dark tunnel for the client's benefit, your writing will lack the subtle brightness that great lawyers always insert, even in short, non-descript, memos of no particular importance.

### **Clarence J. Duncan, Esq.**

I had the great good fortune of working with, and for a few lawyers whose writings always seemed to rise to near-perfection. Thirty years of drafting, rewriting and polishing words moved me from legal writing to literary fiction. Sometime early in my career, a spark went off and I began to see how critical the words of a lawyer are to the clients we all serve. The defining moment came in the Jennings Strouss law library one evening in the sixties. A senior partner, widely respected for his wisdom and his writing, sat at a library table a few feet away, scribbling on a legal pad. As I watched, he slowly got up and walked around the table keeping his line of sight beamed on that yellow-lined pad of paper. He came back around to his chair, stopped, rocked in place for a moment or two, took a step backward, hesitated, then sat down. The slight squint in his gray-blue eyes softened to a sheen of confidence. He erased a single word on the pad.

I thought as I watched him circle the table that he might be thinking of an argument to make, or recalling an obscure case to cite, or even searching for a relevant fact. I don't remember the exact words he used to answer my question, "Just one word, Dunc? Is that all it takes?"

Dunc knew what all great writers always know. It's not the right word that makes the difference, it's getting rid of the wrong one.

In essence, he had gone back over a phrase, dropped an unsatisfactory word, inserted a superior one, and perfected the work. I later learned that it was the final draft of an appellate brief that became embedded in a famous case. I don't remember the case or the single word that Mr. Duncan changed. But it was important.

For me, that was a defining moment, although I cannot say I really understood the nuance. That took years. All writers can recount an early writing experience that became a continual intoxication, and a fever to write well. Sometimes it starts in the third year of law school. With patience and hard work, it can carry you far beyond the beam of your headlights.