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Training Great Writers, Not Just Legal Writers

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Beyond the Rules: Creating Great Writers – Not Just Legal Writers

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We’ve all heard and taught the rules. Be concise, organized, compelling, logical, and themedriven. Avoid legalese, repetition, overly long sentences, esoteric words, and grammar and spelling errors. These rules are indispensable components of effective legal writing. But tomorrow’s Legal Research and Writing (Lawyering Skills) programs must prepare students to be great writers, not just legal writers – to be artists, not just artisans. At its core, legal writing is no different than other types of writing. Thus, legal writing programs should incorporate the following five skills that great writers of all genres and styles embrace before penning the first words of a novel, poem, and yes, a legal document.

“Great writers read widely. Great legal writers must follow suit. Study briefs written by top advocates, judicial opinions authored by Supreme Court justices, law review articles by eminent scholars, and non-legal writing books that teach the fundamentals of effective prose. While law is not literature, the same devices and skills apply to both, and great legal writers need to mine the broader literary context, including fiction and non-fiction, to fully capture all the persuasive nuances of narrative and storytelling.”

Learning how to ‘think like lawyers do’ is necessary but not sufficient for great legal writing. Great legal writers must think like other lawyers and judges think. What does your adversary want? Can you anticipate your adversary’s argument and craft an effective response? What will be the judge’s frame of reference? What public policy will the judge favor, and can you make the judge want to rule for your client? To be a great legal writer, think like all the other lawyers and judges, don’t just think like any lawyer.

“Legal writing is, in significant part, a rule-based craft. “IRAC” and “CRAC” are necessary tools, as are the familiar commandments to avoid passive voice, excessive adverbs, repetition, and the rest. The rules are important, but knowing when to break them is often more important. Passive voice, for example, can de-emphasize your adversary’s argument. Repetition can reinforce your theme or remind the court of a legal rule supporting your position. Great legal writing involves effective strategy, not just technique, and sometimes, breaking the rules and departing from formulas are better strategies to arrive at great legal writing.”

“Know the rules well so you can break them effectively”
- The Dalai Lama

“If you don’t have time to read, you don’t have the time (or the tools) to write. Simple as that.”
- Stephen King

“To be the kind of writer you want to be, you must first be the kind of thinker you want to be.”
- Ayn Rand

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You never know when—or where—a brilliant idea will emerge. The “winning” argument might come to you in class, at a restaurant, or while you’re in the shower. Taking a notebook or voice recorder wherever you go will ensure that those “brilliant” moments are captured. Don’t try to remember what you thought. Capture it on paper or digitally.

Good writers don’t obsess about how many hours they’ve spent on a project or waste time on useless tasks. They know how to work smart. They understand the importance of re-writing. It takes several, if not many, re-writes (not just revisions), to produce a document of impeccable quality. For example, Chief Justice John Roberts re-writes his opinions dozens of times before release. Why? Because great legal writing involves organization, flow, clarity, persuasiveness, style, word choice, and much more, all of which require many iterations to approach perfection. Great legal writers heed the words of Anton Chekhov: “Don’t tell me the moon is shining; show me the glint of light on broken glass.” No one can achieve that in a first draft.

“If it sounds like writing . . . rewrite it.”  
-Elmore Leonard

“I do not believe that legal writing exists . . . That is to say, I do not believe it exists as a separate genre of writing. Rather, I think legal writing belongs to that large, undifferentiated, unglamorous category of writing known as nonfiction prose. . . . it became clear to me, as I think it must become clear to anyone who is burdened with the job of teaching legal writing, that what these students lacked was not the skill of legal writing, but the skill of writing at all * * * [T]he prerequisites for self-improvement in writing . . . are two things. Number one, the realization—and it occurred to my students as an astounding revelation – that there is an immense difference between writing and good writing. And two, that it takes time and sweat to convert the former into the latter.”  –Justice Antonin Scalia

“Always carry a notebook . . . short-term memory only retains information for three minutes; unless it is committed to paper you can lose an idea forever.”  
-Will Self