

THE TAO OF
LEGAL WRITING

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JUDITH M. STINSON

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To Carlos and Mario

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INTRODUCTION

After teaching legal writing – especially advanced legal writing – to students over the past fifteen years, I discovered that many of the concepts most central to effective legal writing do not lend themselves easily to explanation. But a parallel to those aspects of legal writing that are most difficult to articulate can be found in the *Tao Te Ching* and, to a lesser extent, eastern philosophies in general.

You need no prior exposure to the *Tao* to understand this book or the methods it describes, but for those interested, there are numerous sources that translate and provide commentary on this ancient Chinese philosophy. The *Tao's* author, Lao-Tzu, was born about 570 B.C., and very little is known about him other than the book he authored. This legal writing book uses the translation by Stephen Mitchell;¹ each chapter begins and ends with a quote from a passage of the *Tao* that embodies the principle being discussed. Citations are to the relevant chapter in the *Tao*.

The word *Tao* translates into “*the way*.” Mitchell sums up the main concept embodied in the *Tao*, *wei wu wei* (literally “doing not-doing”), well:

1. Stephen Mitchell, *Tao Te Ching: A New English Version* (Perennial Classics 2000).

A good athlete can enter a state of body-awareness in which the right stroke or the right movement happens by itself, effortlessly, without any interference of the conscious will. This is a paradigm for non-action: the purest and most effective form of action. The game plays the game; the poem writes the poem; we can't tell the dancer from the dance.²

This book is about *the way* to write – like the *Tao* is about *the way* to live. The *Tao*'s basic point is simply this: don't force it; don't go against the nature of things. Learn that nature, accept it, and work within it – and you will be more successful. In legal writing, this requires six things:

- Be Flexible
- Don't Rush
- Break It Down
- Know When to Stop
- Reflect
- Let Go

The following chapters will explore each of these principles.

This book is designed for anyone who wants to be a better legal researcher and legal writer. Whether you are a law student, a paralegal, a lawyer, a judge, or anyone else who has had some training or experience in legal research and writing,³ this book will provide a number of tools to help you become more proficient at legal analysis, legal research, and legal writing.

The first step in “advanced” legal research and writing is to refresh the skills learned in the introductory legal research and writing course: basic legal analysis, basic legal research, and basic objective and persuasive writing. This book will provide that refresher,

2. *Id.* at viii.

3. For those who completed a basic course many years ago, your practice experience in the meantime should provide all the background needed for you to jump into this book. For those with no prior legal writing experience, this book may still be helpful as a supplement to a basic legal research and writing text.

in a condensed format, as well as discuss matters that may make more sense now that you have had some exposure to and a little practice with the basic steps. Those additional matters include, for example, drafting a variety of documents including office memos, client letters, motions, appellate briefs, and even time sheets; re-searching regulations; finding an effective balance between book and computer research; and editing your own and others' work.

Many examples and discussions in this text are framed within the litigation setting because that is the model used most often in law schools, but the same principles apply to transactional drafting, with a few caveats. If you are interested specifically in drafting, especially a specialty area of drafting, you should also review a text or texts designed for that purpose.

This book is short for a reason: less is more. This text could go on for a thousand pages discussing various elements of legal analysis, legal research, and legal writing. My goal with this book is to provide the most effective techniques and tools for you to follow, and to provide them as quickly as possible. In a hundred pages or so, by reading this material and spending time thinking about these topics, you are likely to become better at legal analysis, legal research, and legal writing. Some of the information in this book will be familiar, and some will undoubtedly be new. Even with the familiar information, reading and thinking about it again is bound to be at least somewhat helpful.

Researching and writing are lifelong learning experiences – the more we practice these skills, the better we become. The more opportunities you have to research and write, and the more you try to incorporate the principles discussed in this text, the faster you will improve. In addition, thinking about legal research and writing in a new or slightly different way will add to the available choices about how to approach a problem or task. There are, and will be, moments of frustration with almost any project. But as you become more proficient in legal research and writing skills, you will feel less burdened by research and writing projects. Furthermore, as your skills improve, the more confidence you – and others – have in your analysis and in your communication of that analysis.

Mitchell paints the picture of the Tao's "central figure": the person "whose life is in perfect harmony with the way things are."⁴ It is my genuine hope that after reading this book, legal writing becomes closer to a harmonious experience for you.

4. Mitchell, *supra* n. 1, at viii.