

Becoming a Legal Writer

Becoming a Legal Writer

A Workbook with Explanations
to Develop Objective Legal Analysis
and Writing Skills

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CAROLINA ACADEMIC PRESS
Durham, North Carolina

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ISBN 978-1-5310-0448-4
e-ISBN 978-1-5310-0447-7
LCCN 2019941883

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To my late grandparents (Jeanette, Hugh, Margaret, and Anthony) who, despite limited educational opportunities, impressed upon me the importance of education; my mother (Verna) who, paving a career in education, showed me how much one can love school and students; my father (Wallace) who passionately taught high school math, modeling the technique of teaching skills to acquire mastery of material, and later pursued a law degree at St. John's (where I have spent 25 years of my career); my stepmother (Deborah) who ascended to great heights in a university; my husband (Paul Skip Laisure) who uses his legal skills every day to make a difference in this world; and to my children (Andrea and Corey), and nieces and nephews, who embody the unlimited potential in today's youthful generation.

—ROBIN BOYLE-LAISURE

To my brother, Tom, and sister, Susan, their partners, Elizabeth and Olivier, and their children Morgan, Gabi, and Henry. Also, to my brothers-in-law, Tom and Dan, and their partners, Sarah and Karie. Family is everything.

—CHRISTINE COUGHLIN

To the memory of my Dad and my Grandmother. Thank you both for showing me what grit, determination, and a strong work ethic look like. Thank you most of all for shining your light on me.

—SANDY PATRICK

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Acknowledgments

Some of the exercises in this book had their genesis decades ago, taking shape into the semblance of a workbook in Professor Robin Boyle's office. Then the successful legal writing book appeared on the market—*A Lawyer Writes* by Christine Nero Coughlin, Joan Malmud Rocklin, and Sandy Patrick (3d ed. Carolina Academic Press). The workbook draft seemed like a natural fit as a companion to the published textbook, and Professor Boyle, together with the amazing synergy of Professors Chris Coughlin and Sandy Patrick, endeavored to continue writing and polishing this workbook. Professor Boyle gives much credit for the quality of this workbook to her co-authors for working with her as a team, creating fresh material, and editing thoroughly; the book is a significantly better product as a result of their expertise and the assistance of staff support at their respective schools.

Joan Rocklin has graciously permitted us to model chapter topics, phrasing, and material from *A Lawyer Writes*. She also contributed some fresh copy, and more importantly, her insightful and precise advice. Thank you for getting us started on the path.

Exercises develop skill sets, and skills can be incorporated into many academic settings. Although this workbook can be a companion to *A Lawyer Writes*, we drafted it in such a way that it can be used alongside any legal writing text. We also wrote it for purposes of academic support and for pipeline programs.

Thank you to the greater legal writing community for inspiring us with your exercises and to our colleagues inside and outside of our schools who graciously shared their materials. We took liberties in adapting your material to fit within our chapters, but we endeavored to acknowledge your work where the exercise appears. Special thanks goes to: Jennifer Cooper, (late) Rita Dunn, Paul Figley, Joe Fore, Steven I. Friedland, Bryan A. Garner, Russell Gold, Laura Graham, Sue Grebeldinger, Kate Irwin-Smiler, Lucy Jewel, Liz Johnson, John Korzen, and Hadley Van Vactor. Any errors or omissions of attribution are purely unintentional. With every project, we realize the immense contribution that legal writing colleagues across the country have made—you have not only sparked ideas, but you have also shaped who we are as teachers. Thank you.

We acknowledge the inspiration we received from entities, such as the helpful Idea Bank of the Legal Writing Institute and from National Public Radio. We did our best to credit

contributing authors to the Idea Bank. NPR's insightful reporting of news stories inspired at least two of the fact patterns in the book.

We also thank our Teaching Assistants for guiding our law students through the exercises in class, proofreading rough drafts, and giving us feedback. Thanks goes to Research and Teaching Assistants at St. John's University School of Law who contributed over the past several years: Divya Acharya, Charles Akinboyewa, Brian Auricchio, Max Bartell, Grant Bercari, Laura Berry, Michael Bloom, Jamie Caponera, Jennifer Carnovale, Kaveh Dabashi, Andrew Esposito, Gregory Klubok, and Veronica Reyes. At Lewis & Clark School of Law, we thank Cassandra Dawn, Carolyn Griffin, Stephanie Keys, and Kristen Kinneary. Thank you also to Cyd Maurer and Nicole Burke for their help and support. At Wake Forest School of Law, we thank Nikki Arcodia, Nick Bedo, Tim Day, Corri Hopkins, Henry Hilston, Kaylen Lofin, Melissa McKinney, Adam Messenlehner, and Josh Revilla.

Thank you to our respective law schools for their institutional support. Professor Boyle appreciates the support from St. John's University School of Law for her summer scholarship stipend to engage in the writing of the book, and from former and current law school deans—(late) Mary Daly, Michael Simons; dean for faculty scholarship, Anita Krishnakumar; and the dean-who-always-has-your-back—Andrew Simons, Vice Dean Emeritus. Thanks also to her legal writing colleagues and the secretarial assistance from Janet Ruiz-Kroll over the years. Professor Patrick thanks Lewis & Clark School of Law, especially Dean Jennifer Johnson and Associate Dean of Faculty John Parry for the summer research grant that funded this writing opportunity. Professor Patrick also thanks her incredibly supportive colleagues at Lewis & Clark: Steve Johansen, Judith Miller, Hadley Van Vactor, Bill Chin, Aliza Kaplan, Toni Berres-Paul, and Lora Keenan. Professor Coughlin thanks Wake Forest School of Law for its support, particularly Dean Suzanne Reynolds and Associate Executive Dean for Academic Affairs Jonathan Cardi. Professor Coughlin also thanks her other Wake Forest legal writing colleagues who provided invaluable feedback on drafts and who are so generous in sharing their teaching ideas and materials: Tiffany Atkins, Tracey Coan, Luellen Curry, Heather Gram, Sally Irvin, Chris Knott, Hal Lloyd, Mary Susan Lucas, Ruth Morton, Abby Perdue, Vanessa Zborek. In addition, Professor Coughlin would like to thank her Administrative Assistant, Ms. Cynthia Ring, for her extraordinary help and patience.

Thank you to family and friends. Special thanks to Anna Blake Patrick for the graphic illustration she provided. Professor Boyle's husband, Paul Skip Laisure, gave us insightful advice on criminal law and other topics. Professor Boyle also thanks her family, close friends, and book club for their encouragement. Professor Patrick thanks her family for letting her use nights and weekends to focus on work. Professor Coughlin thanks her family, extended family, and circle of friends. She knows how lucky she is to have their constant support and inspiration.

And finally, special thanks to our publisher, Carolina Academic Press. CAP is a pleasure to have as our publisher. We could not ask for a more competent, caring, and gracious group of people to help us along this journey.

Introduction

- I. **Lawyers Write**
- II. **Developing as a Legal Writer**
- III. **Learning Styles**
- IV. **Using This Book**

Welcome to *Becoming a Legal Writer: A Workbook with Explanations to Develop Objective Legal Analysis and Writing Skills*. This workbook will help you develop two essential lawyering skills: objective analysis and writing.

All lawyers are writers. As an attorney, you will undoubtedly devote a substantial portion of your time to drafting office memoranda, letters, pleadings, motions, briefs, contracts, and wills, as well as client letters, affidavits, and so forth. In a litigation practice, legal writing falls into two main categories: objective analysis and persuasive analysis.

All legal writing begins with an analysis of the law. Analyzing the law includes synthesizing the law from a variety of sources to determine the standards that currently apply. The analysis continues as you assess how that law will apply to a client's problem.

After analyzing the law, you will need to communicate your analysis to someone else—a client, a colleague, or a court. Your analysis may be communicated in a memo, a letter, an email, or a brief to a court.

This workbook will help you develop the skills you need to analyze the law and communicate that analysis. This workbook will help you develop those skills by providing you with practice—lots of practice.

However, before jumping into that practice, some background is in order. This introduction first describes, in Part I, the different kinds of writing that lawyers do. Then, Part II explains what it takes to become an excellent legal writer—namely, lots of practice, making mistakes, receiving feedback, and learning from the mistakes and feedback. Because learning can proceed more smoothly if you understand how you learn best, Part III explains different learning styles and how you can assess your own learning style. At the end of this chapter, Part IV provides advice about how to use this workbook.

I. Lawyers Write

Simply stated, legal writing encompasses a broad spectrum of legal analysis, objective legal writing, and persuasive legal writing. Lawyers engage in objective legal writing by providing advice to clients about the likely outcome of a legal dispute. Objective legal writing is also called predictive writing because the goal of an objective analysis is to predict how a court would most likely rule if presented with the client's case. Lawyers also engage in persuasive legal writing. When writing persuasively, lawyers advocate on behalf of their client in a court of law.

The fundamental skills of legal analysis and writing remain the same whether writing to predict an outcome or to persuade a court of the appropriate outcome. In both cases, you must first understand the law. Then, your explanation of the law must be organized, accurate, and clear; it should be free from grammatical errors; and it must be cited appropriately. This workbook is intended to introduce you to all of these qualities of legal writing. But the learning does not end within a few months, nor at graduation. For the remaining years of your legal career, you will need to keep within your reach a dictionary and books on grammar, citation, and style.

II. Developing as a Legal Writer

An essential component of becoming a strong legal writer is to practice that skill and to receive feedback about your writing. The more you write and receive feedback, the more your writing will improve.

Do not feel defeated with critique. All lawyers—including your professors—received plenty of critique, and they will impart critique upon your work. Critique is part of the learning process of legal analysis and writing. To succeed in law school, read your professors' comments on legal writing assignments carefully and take advantage of them. Learn from them and improve your skills. If you are lucky, your work will be continually critiqued—not just in law school but also as you practice. The savvy lawyer learns from the feedback. One day, after your writing and analysis has become sharp, accurate, and organized, the roles will change, and you will be in a position to help other new lawyers who will be just starting off as you are now.

Along the way, you should develop self-confidence in your writing—an aspect of writing that is difficult to teach but that you should nonetheless hope to acquire. Confidence will develop as you learn to make strategic writing decisions. As a first-year law student, you may be surprised how many factors play into a draft and how many decisions you will need to make—such as, “Is the law stated accurately? Have I drawn a conclusion? Have I applied the law to the facts with sufficient clarity? Do I have thesis sentences? Should this broader statement be placed in spot ‘x’ or ‘y’?” One of your goals should be to develop confidence to make macro- and micro-decisions about how you communicate your analysis.

Finally, keep reading. Read for pleasure, and read books that are well written. In doing so, you'll develop a fondness of words as well as an intuitive sense of good writing.

III. Learning Styles

Up until 25 years ago, the prevailing view was that all law students learned by listening, and thus, a typical law school classroom had 100% auditory learners. This faulty premise helped to support the predominance of Socratic-method questioning in a traditional amphitheater-styled classroom. That view was shattered with the first empirical study done in a law school, which demonstrated that “law students were diverse in their learning

styles.”¹ The Dunn and Dunn Learning Style Model was used in that study, but there are other models as well. The Dunn and Dunn Model categorizes twenty-six different elements that affect how one best learns and studies. To understand “learning styles,” it is necessary to examine how individuals process and incorporate new and difficult information into their study habits.

To better understand how you learn, we recommend that you take a learning-style assessment by accessing the following website: www.learningstyles.net. Select the adult learning-style tool called “Building Excellence.” It will cost a nominal fee. During your experience in law school, it would be helpful for you to pay attention to how you best learn. Although recently skepticism has emerged about the significance learning styles should be given, understanding the strategies through which you best learn and retain information remains a vital part of learning. The science is clear about one thing: repeated practice and engagement with new material leads to more durable, long-term learning.² This workbook is intended to give you opportunities for that practice and engagement.

Exploring how you learn and using instructional materials in creative ways would be helpful in gaining the skills of legal writing proficiency. Here are some preliminary questions you may want to ask yourself, based upon five learning-style categories:

Physiological Factors:

- Do you learn by listening (auditory)?
- Do you learn by what you see in text (visual) or in a graph/picture mode (visual picture)?
- Do you prefer to work with your hands, as in turning flash cards (tactual)?
- Do you prefer to learn by doing (kinesthetic)?

Psychological Factors:

- Do you prefer to learn step by step (analytic learners) or through the “big picture” (global learners)?
- Do you find yourself blurting out answers (impulsive) or needing time to think through an answer (reflective learner)?

Emotional Factors:

- Are you motivated by a desire to succeed that is fueled by your own ambitions or from an external source?
- Are you driven to finish a task or can you leave something unfinished (persistence)?
- Do you follow rules or avoid conformity (responsibility and conformity)?
- Do you feel a need for structure imposed from the outside or do you supply your own way of doing things?

Environmental Factors:

- Do you require silence when studying new and difficult information, or do you prefer a bit of a hum of noise or music?
- Do you need bright light when studying or dim lighting?
- Does the temperature of the room affect your ability to concentrate?

1. Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. L. Rev. 213, 216 (1998).

2. Jennifer Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 Cap. U. L. Rev. 551, 560–61 (2016).

- When reading something challenging, can you absorb the material while you are seated in a soft beanbag-type chair, or do you need a traditional chair with back support?

Sociological Factors:

- Do you learn best while working alone, with one other in a pair, or in small groups?
- Do you prefer to have an expert in the field overseeing your work?
- Do you prefer to learn in a variety of ways, or do you prefer to do the same work in consistent patterns?

As you reflect on your answers to these questions, think about how to create a strong learning experience that incorporates your preferences. Try to experiment on your own by transforming your reading materials into products that you can better absorb. For instance, auditory learners learn by listening; however, they will remember only 75% of what they hear in a 40- to 50-minute lecture. Thus, even for students who show a strong preference for auditory learning, they still should be relying upon secondary and tertiary strengths to solidify their note-taking in class. For others, they may be learning by listening but only if they are interested in the topic. And for some, learning by listening may not be effective after a short period of time in the lecture.

Visual learners may have a strong preference for visual pictures, meaning they learn by putting concepts into graphs and pictures, rather than course outlines that are heavy with text and are linear in format. Such learners create charts, graphs, and diagrams. Later in this book, we provide examples of charts and diagrams for mapping cases. Word processing systems can help create visual images that are suitable for this learning style.

Tactile learners use their fine motor skills, fingers, and hands while concentrating. If your assessment shows that you have a strong preference for this type of learning, then the sense of touch is important and working with materials that you can manipulate will help you learn. You can create index cards and flip them over with questions on one side and answers on the other. The creation of materials with your hands will help solidify concepts, and you can experiment with maps, charts, graphs, and timelines.

Kinesthetic learners need to role-play because they experience by doing. Interactive exercises are helpful. In legal writing, the classroom exercises often simulate client counseling or, eventually, courtroom arguments. Kinesthetic learners will benefit from peer teaching, which is a popular exercise in legal writing.

You may find that you have a strong tendency toward one learning style or you may utilize aspects of different learning styles. Ultimately, as you work through this workbook and your first semester of law school, take inventory of your own learning-style preferences and the strategies through which you learn best, and tailor your study habits to maximize your preferences.

IV. Using This Book

Use this workbook as a supplement to an assigned legal writing text. We have designed the workbook so that you may write inside the book. The goals of this workbook are to reinforce the core principles of good legal analysis and writing and to give you a chance to practice what you are learning.

Cases and other authorities have been adapted throughout the book to work in concise exercise format.