

Style, Substance, and Process

An Elegant Trio

Elegant Legal Writing

Ryan McCarl (University of California Press 2024), 199 pages

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Legal writing is a skill that must be developed over time. Like with any skill, however, people come to the table with different competency baselines. These variations stem from the diverse backgrounds of law students on spectrums of age, undergraduate majors, work history, and intuition derived from life experiences, among other factors. Their professors have similarly diverse backgrounds that inform their teaching.¹ Skill gaps are often exaggerated over the course of law school as some students adapt to legal writing techniques faster than others. The effect of these accumulations is that everyone starts and ends their pursuit of legal writing competency at different places.

Scholars of legal writing doctrine have devoted countless pages to describing the theory underlying these variations and proscribing solutions for teachers and students alike.² Many of the foundational texts in the profession have been authored by people I'm proud to call colleagues.³ Within legal writing scholarship, some techniques are universally accepted while others present emerging theories. And there

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¹ See Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009) (describing the expectations and experiences of Black women law professors who teach legal writing compared to those of their overwhelmingly white and male doctrinal colleagues).

² See, e.g., Johanna K. P. Dennis, *Ensuring a Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEX. WESLEYAN L. REV. 613 (2010); Emily A. Kline, *Teaching Social Justice in the Legal Writing Classroom through Personal Narrative*, 25 LEGAL WRITING 29 (2021).

³ See, e.g., MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (6th ed. 2022); LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* (7th ed. 2018); RICHARD K. NEUMANN, JR., ELLIE MARGOLIS & KATHRYN M. STANCHI, *LEGAL REASONING AND LEGAL WRITING* (9th ed. 2021).

are as many ways to teach effective legal writing as there are people to teach it.⁴

However, the shelf of legal writing texts aimed at practitioners is far from full.⁵ Ryan McCarl, a partner at Rushing McCarl LLP and adjunct professor at Loyola Law School, seeks to remind us of this important segment of the legal community in his book, *Elegant Legal Writing*.⁶ For some in this audience, legal writing class is a distant memory while others newer to practice simply never developed mastery of the skill. Still others pride themselves on their competency with little understanding of the importance of continuing to develop towards mastery. And, in the end, practitioners are often overwhelmed with the work of the law, including their core job duties, continuing legal education requirements, service commitments, networking, and personal life obligations.

Recognizing the difficulty for practitioners to devote significant time to learning legal writing from more complex texts, *Elegant Legal Writing* endeavors to be approachable and succinct. The book is meticulously divided between three primary sections, which in turn subdivide into dozens of smaller sections that often take up less than a page. It also helpfully sports both a robust index and detailed table of contents to help readers navigate to the section of immediate relevance. There is no need to read the book cover-to-cover to improve legal writing competency, though doing so would surely benefit the reader.

The first main section of *Elegant Legal Writing* is titled “Style” and focuses on core principles of legal writing, concision, plain language, sentence structure, organization, and tone. McCarl’s primary purpose in this section seems to be encouraging attorneys to interrogate every aspect of our professional word choice and look for ways to make legal documents more approachable. For example, when presented with the choice to use a Latin phrase, the attorney should determine whether it’s a term of art or legalese. If the word can be replaced with an English equivalent—i.e., “among others” instead of “*inter alia*”—it is legalese and should decorate the cutting floor. By comparison, some words and phrases carry meanings so specialized they cannot be easily replaced, such as “negligence.” Finally, some Latin phrases have been broadly incorporated

⁴ I am surrounded by brilliant and generous colleagues who teach in and think progressively about legal writing, including Mary Beth Beazley, Lori Johnson, Joe Regalia, Nantiya Ruan, Rebecca Scharf, and Kathy Stanchi. I was fortunate to learn legal writing from the phenomenal Elizabeth Berenguer (Stetson), to find a mentor in Linda Edwards (UNLV, emerita), and to stay close with a peer who never stops pushing me to be my best in Amanda Fisher (Arkansas).

⁵ There are, of course, notable titles occupying the space. See, e.g., ELIZABETH FAJANS, MARY R. FALK & HELENE S. SHAPO, *WRITING FOR LAW PRACTICE* (3d ed. 2015); BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* (3d ed. 2023); ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (2008).

⁶ RYAN MCCARL, *ELEGANT LEGAL WRITING* (2024).

into English such that there is no functional equivalent to replace them with—think “alter ego.”

Admittedly, writing a review of this book is difficult because I feel the need to practice many of *Elegant Legal Writing’s* teachings in my own work product. This is, of course, the point. As legal writers, we should be challenged to continue developing our craft. I have attempted in this review to keep most sentences short, delete unnecessary intensifiers, and reduce hedging. Nevertheless, legal writing is still writing and writing is still a mix of science and art. Thus, my compliance (or not) is voluntary and imperfect, which is also the point. As legal writers, we must balance good technique (science) with instinct and preference (art). McCarl’s book can help to recalibrate our instincts so there is less of a gulf between the two halves of our brains.

The second main section of the book is titled “Substance,” and it reminds us in the opening paragraphs that “[a] beautifully written brief cannot salvage an untenable argument.”⁷ Readers should not be misled by McCarl’s choice to open the book with discussions of style when substance is the more important piece. Rather, style should be thought of as foundational to the more advanced drafting considerations of substance. Specifically, it makes sense to focus on asserting propositions only after the writer knows how to craft strong sentences with forward momentum, active voice, and a professional tone. Similarly, legal writers should support their propositions with relevant authority, but they will do so more effectively after learning to insert unobtrusive citations.

Substance’s three main subsections—briefs and motions, legal citation, and legal storytelling—collaborate to illustrate the importance of writing with intention. McCarl instructs the reader to “[t]ake off the IRAC and CREAC training wheels”⁸ and focus on crafting audience-focused arguments with clear reasoning, contextual citations to authority, and persuasive storytelling. As this is a section about substance, McCarl’s advice is less about the various components of legal briefs and citation than first year course textbooks. Instead, his advice emphasizes making powerful arguments with precision, omitting unnecessary adherence to past norms.

In the end, “every legal dispute is a story about people in conflict,” so an effective legal writer should craft narratives that address and seek to resolve that conflict in ways that feel inevitable and just.⁹ Moreover, though many lawyers overlook the import of legal storytelling, “humans

7 *Id.* at 89.

8 *Id.* at 93.

9 *Id.* at 121.

are hardwired to remember information when it is delivered as part of a story.”¹⁰ This focus on storytelling is not merely a memory game, however, as storytelling is also a powerful form of persuasion derived from the combination of pathos and logos (i.e., emotion and logic).¹¹ Thus, to focus on substance is more than choosing which words to use—it is to focus on the types of words to employ for maximum efficacy.

The final section of *Elegant Legal Writing* is titled “Process.” Becoming an effective legal writer requires more than the ability to prepare stylish and substantive sentences—you must also do the writing. In this last section, McCarl implores the reader to prepare themselves for “the mental game of writing” by reducing distractions, budgeting time, avoiding perfectionism, and ultimately putting words onto the page by any means necessary.¹² These suggestions might be familiar to writers. What makes these contributions worthy of separate consideration in this book, however, is that they’re offered in conversation with the first two sections. Readers are not writing the same terrible first draft unaided—they have, in theory, incorporated lessons from earlier discussions to produce a higher quality draft. This incorporation of best practices into early drafts allows writers to produce consistently better work in the same amount of time, which leads to more impactful edits in later stages.

In addition to encouraging the act of writing, *Elegant Legal Writing* provides helpful tips for working with technology to improve efficiency, legibility, and overall attractiveness of the document. Many of these tips will be familiar to younger lawyers but awareness does not equate with implementation. For example, McCarl recommends legal writers use a text editing program, such as Notepad or Scrivener, as opposed to Microsoft Word or Google Docs for initial drafts. In supporting his proposition, McCarl notes that larger word processing documents get bloated and slow down with the heavy work of formatting, and writers often get distracted fiddling with formatting quirks that slow down the writing process. By comparison, text editors can only do indentations for headings, allowing the writer to stay organized but otherwise ignore formatting decisions until the editing phase.

Elegant Legal Writing is, overall, an easy read and well suited to teaching writing hacks to lawyers and law students alike. The sections are divided in obvious and useful ways to guide the reader and the finding aids are meticulously crafted to navigate through the book as needed.

¹⁰ RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT’S STORY: EFFECTIVE LEGAL WRITING* 64 (3d ed. 2018).

¹¹ *Id.* at 54.

¹² MCCARL, *supra* note 6, at 135–53.

While this book lacks the content necessary to instruct first-year students in the mechanics of preparing legal memoranda and briefs, it will likely aid students who struggle to engage with the writing process. It is also useful for new attorneys and those seeking to mentor young attorneys on efficient legal writing practices. I would recommend *Elegant Legal Writing* as a valuable supplement to any program of legal writing, and encourage attorneys to incorporate these lessons into their own writing practice.