Practice and Fitness Making Writing Perfection More Nearly Attainable

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"Writing is frustration — it’s daily frustration, not to mention humiliation. It’s just like baseball: you fail two-thirds of the time.” — Philip Roth

As the sun sets over an almost-dry baseball field in Fairfax, I watch with admiration my 12-year-old son at baseball practice. The coach takes the team through a series of drills, as he helps them refine and improve their hitting, fielding, and running. This team, a seasoned one with many “veteran” players, practices two to three times a week. Practice makes almost-perfection more readily attainable (as no one and nothing is perfect); the team is the second seed in Fairfax Little League Majors. Writing, like baseball or any other skill, is not innate. We are not born as good legal writers. Few among us can write a perfect document the first time we put pen to paper or fingers to keyboard.

Practice alone, however, is not sufficient to achieve mastery in any sport or any type of legal writing. Mastering the art of legal writing requires practice, flexibility, the ability to self-edit, and, above all, patience. Today, a baseball player or any other professional athlete must be physically fit, exercise and condition his or her body, and stay current on new fitness techniques and good nutrition. A professional writer, e.g., a lawyer, needs to practice good writing fitness, staying abreast of current best writing practices and trends and being willing to change old habits to reflect current audiences and “rules.”

I can hear it now. You are asking yourself this question: Where can a busy lawyer find the time to learn all these best writing practices? Well, do I have a treat for you!

On April 27, 2018, my partner-in-presentation-crime, Heather Ridenour, and I were the primary speakers at the Third Annual Legal Writing Workshop held at American University Washington College of Law (“WCL”) in Washington, D.C. The workshop is a collaborative effort by the WCL Legal Rhetoric Program, The Virginia Bar Association Law Practice Management Division, the Virginia State Bar Section on Education of Lawyers, and Virginia CLE. It was developed...
after participants in the 2012 Virginia State Bar Conclave on the Future of Legal Education in Virginia observed that lawyer communications were deteriorating. In 2013, the Virginia State Bar Section on the Education of Lawyers established a Task Force on Legal Writing, chaired by Virginia Supreme Court Senior Justice Elizabeth B. Lacy, which recommended that more CLE providers offer legal writing seminars.

In April 2016, the inaugural day-and-a-half workshop was conducted in Washington, D.C. In May 2017, the second workshop took place in Richmond, Virginia, and in April 2018, the third workshop returned to Washington, D.C. This in-depth workshop has included the following topics:

- Basic grammar and writing strategies
- Tailoring legal writing to meet audience and purpose
- Understanding and implementing road maps and transitions
- Ethical considerations and professionalism in legal writing
- Effectively writing a discussion or argument section of a memo
- Persuasive fact and rule characterization and emphasis
- Best practices in transactional drafting
- Effective oral and written advocacy.

Rich DiMeglio, a program attorney with Virginia CLE who has been involved with the workshop from its inception, commented on the history and structure of the program: “The program continues to evolve and improve every year based upon the input of the expert faculty and the comments of prior attendees. The small group setting, the intensive focus on writing, and the energetic interaction of the entire faculty with the attendees throughout the program makes this program truly special. Where else can you receive advice to improve your legal writing abilities from writing professors, judges, and leading practitioners, all at the same time?”

Each year, the workshop is honored and fortunate to have esteemed, experienced legal writing professionals as part of the faculty. This year, the Honorable Mary Grace O’Brien of the Virginia Court of Appeals, the Honorable David Lannetti of the Norfolk Circuit Court, John Bredehoft of Kaufman & Canoles, Andrea Bridgeman of Freddie Mac, and Steve Emmert of Sykes, Bourdon, Ahern & Levy, P.C., participated in breakout sessions and a professionalism panel. This article’s authors returned as the primary presenters.

Long-time faculty member Andrea Bridgeman enthusiastically summarized the experience: “I have so enjoyed being included in the faculty! It is such a quick, learned, helpful group of experienced lawyers, and it is so important to have the judges present and engaged, as they bring perspective from the bench and the experience of their prior lives at the bar. … ‘T’he same can be said of the attendees, with their varied positions, work environments and ‘seasoning’ in practice.” Moreover, faculty member and appellate advocacy guru Steve Emmert stated that “[o]ne of the primary benefits of this course is that it helps you unlearn some of the stodgy writing habits that were all too contagious in law school. It’s a great way to stop writing like a 19th-century lawyer and step into the 21st.”

Judge Lannetti observed, “Too often lawyers — and especially young lawyers — underestimate the role they play in educating the judge. A well-written brief provides a landscape to identify a problem and offer a solution. Attorneys have the opportunity to tell a story, and although the story must be founded on legal authority, the way the story is told is almost as important as the content itself.”

Participant evaluations consistently mirror the enthusiasm of the faculty. One of this year’s attendees stated, “For a long time I’ve wanted to attend because, although I’ve been told I’m a good legal writer, I can always improve. This seminar helped me greatly.” Another participant noted, “I most enjoyed the practical tips and personal anecdotes of the faculty.” Still others remarked, “It refreshed my memory in various areas” and “I enjoyed going over grammar rules and clarifying myths.”

Practice, along with staying current, refreshed, and being willing to abandon outdated ideas, can make perfection more attainable. To hit your writing over the fence (and continue the baseball analogy), please join us as we travel to Virginia Beach in April/May 2019 for the Fourth Annual Legal Writing Workshop. Too far to drive? Do not despair. We will be back in Washington, D.C., for the fifth iteration!

As always, your comments and suggestions are welcome at dspratt@wcl.american.edu, but make sure you practice phrasing the comment before hitting “send,” as only nearly perfect comments will be acknowledged.