

# Inspiring Great Writing in Law Students

By ANTONETTE BARILLA\*

LAW SCHOOLS, focused as they are on providing intense, specialized, professional training, might legitimately be accused of stifling the creativity and innovation that define brilliant writing. When it comes to law school writing, there are blueprints for nearly every type of composition—from case briefing and exam writing, to the design of legal memoranda and the outline for an oral argument. And while professors are experts at teaching students the requisite formulas, we, as practitioners and legal writing professionals, are not as adept at facilitating the development of *good* writing—writing that is unfettered by artificial legal formulas. We forget that *anytime* one writes, even in a personal capacity, they provide some measure into their competence as a professional. The intended audience of a letter to the editor, a blog post, holiday cards, hotel reviews, business proposals, letters to friends, etc. will develop an opinion about the writer’s skill, cleverness, values, and identity. Each time a law student or attorney commits his or her thoughts to words, they open their professional reputation to some level of evaluation.

Bryan Garner wrote, “The company we keep is crucial to who we are. When it comes to writing, there’s a community of writers that you needn’t know personally. You must simply observe what they do to make their writing so readable and effective.”<sup>1</sup> Exposure to great writers is critical to the development of sound rhetorical skill.<sup>2</sup> Legal education, however, commonly limits student exposure to the wide array of brilliant writing.<sup>3</sup> We immerse

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1. BRYAN A. GARNER, GARNER ON LANGUAGE AND WRITING 15 (2009).
2. See STEPHEN KING, ON WRITING: MEMOIR OF THE CRAFT 146 (2000) (“Being swept away by a combination of great story and great writing—of being flattened, in fact—is part of every writer’s necessary formation. You cannot hope to sweep someone else away by the fore of your writing until it has been done to you.”); see generally DONALD MURRAY, READ TO WRITE (3d ed. 1993) (explaining how one develops as a writer through reading); see KELLY GALLAGHER, WRITE LIKE THIS: TEACHING REAL-WORLD WRITING THROUGH MODELING & MENTOR TEXTS 15 (2011).
3. Author conducted a survey in which ABA-accredited law school professors were asked about the types of reading and writing assignments they assigned students throughout their time in

our students in case opinions. The massive reading load assigned to students in this singular and often lifeless genre can deprive them of consistent and on-going opportunities to read worthier models necessary to developing exceptional writing skill. The average law student reads well over a thousand cases in law school. While some case opinions are expertly constructed, many of them do not evidence a concern for the style in which they are drafted. And as students spend the majority of their week occupied with this singular genre of writing, they lack exposure to the artistry and power of writing designed to command the attention of an audience. As Chief Justice Roberts asserted:

You develop a lot as a writer the more you read . . . People lose a lot of writing ability when they get to law school because they tend to read a lot of stuff that isn't well written, and they tend to stop reading other stuff that is well written because they don't have the time. They're focused on some badly written cases, from whenever, or some badly written statute. And they're not reading anything good.<sup>4</sup>

## I. Looking Back to Classical Instruction in the Art of Writing

Classical instruction in rhetoric is founded on the belief that communication is one of the seven classical arts.<sup>5</sup> It is believed that communication can be taught most effectively through careful study, imitation, and repetition.<sup>6</sup> Unlike modern teaching practices where emphasis is placed on choice, individualism, and a heightened, and sometimes unfounded, respect for the uniqueness of student work,<sup>7</sup> classical instruction is based on the identification of exceptional models, and the study and emulation of those works.<sup>8</sup> Individual style and flair were secondary and valued only if they produced work of equal caliber.<sup>9</sup>

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law school. Their responses indicated that the vast majority of literature that students were exposed to in law school was limited to case opinions, legal textbooks, and a small percentage of legal memoranda, legal transcripts, and other similar practice-related documents. Students from ABA schools across the country were asked the same question and the results were virtually identical.

4. GARNER, *supra* note 1, at 16.

5. *See generally* A SHORT HISTORY OF WRITING INSTRUCTION: FROM ANCIENT GREECE TO MODERN AMERICA 32 (James J. Murphy ed., 2d ed. 2001) (noting Isocrates as the educator who established writing as an important part of the classical curriculum).

6. *See id.* at 180–84 (explaining the development of writing instruction and communication through imitation and repetition).

7. *Id.* at 225 (“They differ from classical treatises on style, emphasizing the genius of the individual author as a source of the material of discourse. . . . The new belletristic practice of distinguishing multiple styles represents an early step toward our own emphasis on the need for each writer to articulate a distinct personal voice.”).

8. *Id.* at 158.

9. *See id.* at 74–76.

## II. Learning the Skill Through Reproduction and Dissection of Good Writing

Guiding students through the process of dissecting an expertly written passage can be one of the most effective tools for helping them to appreciate the artistry of great work. I often begin by making the analogy to the way in which an art student might view a painting. I ask my students if they are familiar with Vincent Van Gogh's *Sunflowers*.<sup>10</sup> When I ask students to briefly describe the painting, they note the obvious—the vase filled with sunflowers that are yellow and brown, and a bit blotchy in appearance. Some are able to recall the blue hue of the background, the color of the vase, and the brown surface on which it sits. We talk about how a student of art might have answered the question, and how, if asked to recreate the same painting, she would likely observe so much more. In working to recreate it, she would likely appreciate every highlight, every curve, and every shadow. She would know what colors require blending in order to create the perfect hue. In describing Van Gogh's creation, they would likely see the painting much differently than the average observer.

In the way that colors and shapes are the tools of an artist, words and the stylistic nuances with which words are conveyed *are our craft*; they are the lawyer's trade. One who composes without taking the time to dissect the great works misses great lessons in word placement, meaning, rhythm, and flow. Like a novice, they will continue to view writing at its most superficial form and will only be able to manipulate words at the most basic level—yellow flowers, blue background, and brown table.

How can we teach our students to scrutinize great works? We might consider beginning with a short piece the student can duplicate. Replicating work was often seen as a vehicle for careful and detailed critique of well-regarded writing.<sup>11</sup> By carefully reproducing, by hand, each capital letter, each comma, and each word, the student is obliged to spend more time with the text than he might otherwise, gradually furthering his understanding of the writer's plan, framework, and approach to the topic while simultaneously developing in himself a broader reservoir of effective writing techniques.<sup>12</sup>

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10. See generally *Vincent van Gogh: Sunflowers*, VAN GOGH GALLERY, <http://www.vangoghgallery.com/painting/sunflowerindex.html> (last visited Jan. 5, 2015) (providing background information and an image of Vincent van Gogh's *Sunflowers* painting).

11. See AUBREY GWYNN, *ROMAN EDUCATION FROM CICERO TO QUINTILLIAN* 200 (1926) (“One of Aesop’s fables was read aloud, and the boy was then asked to tell the story himself in simple, correct language. Later he was made write the story down in the same simple style; and another favourite exercise was the free paraphrase in prose of a passage taken from some poet read in class.”).

12. *Id.*

According to the first-century Roman teacher and orator Quintilian:

It is from authors worthy of our study that we must draw our stock of words, the variety of our figures and our methods of composition, while we must form our minds on the model of every excellence. There can be no doubt that in art no small portion of our task lies in imitation . . . And it is a universal rule of life that we should wish to copy what we approve in others.<sup>13</sup>

While we begin to learn through simulation and replication, once familiar with the fundamental formula, we intuitively add our own flair, style, and twist.<sup>14</sup> Having re-written and scrutinized a passage, students should better understand the author's framework. Additionally, students should create a step-by-step recapitulation of the passage outline—a how-to for writing something similar. Requiring writers to understand the thinking and structure behind writing samples enables them to see the language as a template for work on other topics that can be written in a similar fashion.

### **III. Emulate Good Writing**

Use a studied framework as a set of guidelines for creating a similar composition on a different topic. Once complete, students can compare their work to the original and consider additional qualities that could amplify the impact of their work. Word choice, for example, is often a consideration that students overlook. Do the descriptors they utilize convey the message in a clear but commanding manner?

### **IV. Learn by Sharing Perceptions in Writing**

Observe, listen, critique. Opening and closing arguments are supposed to be moving and powerful. Introductory statements in a memo or letter to opposing counsel should be equally influential. What qualities in writing capture the audience's attention? Explore the literal meaning—the immediate objective of the delivery. Describe the subliminal power in choice of words. What would happen if we change a word in the sentence? What would happen if we removed all descriptors? Added some? Modified them? These questions help focus students on the influence and control they have over their audience and cause them to be more aware of their personal word choice.

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13. 4 QUINTILIAN, THE INSTITUTIO ORATORIA OF QUINTILIAN 75 (H.E. Butler trans., 1930).

14. GARNER, *supra* note 1, at 15.

## V. Write for and with Your Students

In his book, *Write Like This*,<sup>15</sup> Kelly Gallagher<sup>16</sup> wrote:

I am the best writer in the room, and as such, I need to show them how I grapple with this mysterious thing we call writing. You are the best writer in your room; your students need to stand next to you and see how you struggle with the process as well . . . No strategy improves my students' writing more than having my students watch and listen to me as I write and think aloud.<sup>17</sup>

Talk students through the writing process. Work through the difficulties of proper phrasing, word selection, and flow, demonstrating the reality that writing even a short introductory paragraph can sometimes be a thorny undertaking. Have students join you in this endeavor. What you produce will be exceptional and will forever serve as a model of brilliant writing. Chief Judge Rosenbaum stated:

A good writing style is rewarded so automatically that you hardly notice what's going on. You think that it's the merits of the case or the soundness of the thought that matters, and that's true as far as it goes. But it's the style—the technique—that makes the thought so transparently powerful. The same thought, in shabby dress, appears much less compelling.<sup>18</sup>

## VI. Don't Underestimate the Power of Recitation

Classical instruction in communication, both written and oral, relies heavily on memorization and recitation.<sup>19</sup> Memorization can strengthen cognitive capacity and help build dexterity and acuity, therefore producing a more efficient memory, “taking it beyond its limitations of capacity and duration.”<sup>20</sup> For some, memorization may also help in developing a rich and wide-ranging vocabulary.<sup>21</sup> The classical model, by focusing on

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15. GALLAGHER, *supra* note 2.

16. *About Kelly*, KELLY GALLAGHER BUILDING DEEPER READERS & WRITERS, <http://www.kellygallagher.org/about/> (last visited Jan. 6, 2015) (“Since 1985, Kelly Gallagher has devoted himself to the teaching of reading, writing, listening and speaking—first and foremost, as a high school ELA teacher in Anaheim, California, and also as a author/consultant who works with educators around the world. Today, he is considered one of the leading voices in literacy education.”).

17. GALLAGHER, *supra* note 2, at 15.

18. GARNER, *supra* note 1, at 17.

19. See Robert H. Beck, *Traditional, Progressive, and Modern Education*, in *THE THREE R'S PLUS 3* (Robert H. Beck ed., 1956) (“By traditional education, we simply mean classrooms in which the major portion of the time was given over to hearing the recitation of individual students . . . recitation was in command.”).

20. Marc Smith, *Why Memorising Facts Can be a Keystone to Learning*, *GUARDIAN* (Nov. 21, 2012), <http://www.theguardian.com/teacher-network/teacher-blog/2012/nov/21/memorising-facts-keystone-learning-psychology>.

21. Jessie Wise & Susan Wise Bauer, *Poetry Memorization: Methods and Resources*, *WELL-*

recitation and memorization, has been a proven method used to train some of the most important minds in history.<sup>22</sup> Recitation was viewed as a means of demonstrating an intimate understanding of a selected work and as providing a strong foundation for advocacy and the art of *communiqué*.<sup>23</sup> Memorization and recitation introduce students to new rhythms, speech patterns, and sequences. The vast majority of our language base is the product of speech patterns by which we are surrounded.

In studying, memorizing, and reciting, our cache becomes larger and we have, at the ready, a new and varied set of blueprints to guide our delivery and communication. Recitation, of course, also aids in developing strong presentation skills. Developing and practicing the delivery of a specific message, one that the student appreciates and has dedicated some time to studying, is an excellent method of polishing one's ability to speak effectively and capably. In preparing a recitation, one must inevitably consider the audience of the work, the writer's choice in words and rhythm. Much can be learned about writing through memorization; it would serve our students well to revive these ageless practices.

It is a professor's ability and, arguably, our responsibility to help our students develop the kind of analytical framework that allows them to think critically about the character and style of their writing, while at the same time, provides them with regular exposure to writing that is delivered with flair, polish, and power. Our resolve as educators to undertake the effort to help students develop better-written communications will inevitably transform and enhance the skills of our students, as well as the intellectual climate of our schools.

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TRAINED MIND, <http://www.welltrainedmind.com/poetry-memorization-methods-and-resources/> (last visited Feb. 24, 2015) ("Memorization improves vocabulary; students who memorize poetry learn a wide range of descriptive words that they might encounter infrequently—or not at all!—in prose reading.").

22. LEIGH A. BORTINS, *THE CORE: TEACHING YOUR CHILD THE FOUNDATIONS OF CLASSICAL EDUCATION* 46 (2010) ("The classical model with its focus on memorization and recitation is a proven method that has been used to train the minds of the world's finest statesmen, philosophers, scientists, and artists for over 2,500 years.").

23. See Beck, *supra* note 19; see BORTINS, *supra* note 22, at 31 ("The foundation of a classical education begins with parents teaching children the art of memorization and grammar studies. Some educators might dismiss rote memorization, but I agree that it is beneficial because it trains your brain to hold information. It is the most organic way of learning every devised and goes hand in hand with the way we naturally relate to our children.").