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A Practical Guide to Legal Writing and Legal Method

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A Practical Guide to Legal Writing and Legal Method

John C. Dernbach, Richard V. Singleton II, Cathleen S. Wharton,
& Joan M Ruhtenberg

Littleton: Fred B. Rothman, 1994, 399 pp.

Reviewed by Scott Rollwagen[†]

It is quite easy to dismiss the study of legal method and legal writing as a necessary but tedious adjunct to the study of “real” law. The first-year curricula of many law schools reflect this aversion to the study of legal method by itself. Often, one finds courses in legal writing and research given only a fraction of the credit value assigned to the traditional “core” courses such as contracts, torts, and property.

Part of the reason why legal writing and legal method is given such supplementary status springs from the way we think about method in general. While we may acknowledge that the study of how to think and communicate as a lawyer is necessary, we find it hard to bring ourselves to focus on the study of legal method as divorced from “real” law. The study of method is always at one remove from “real” activity or “real” practice, and we consequently find it difficult, as aspiring practitioners, to talk about doing law before being able actually to do law. We would much rather get right to the point.

In some quarters, this antipathy to the study of method couples itself with a more political concern regarding the study of legal method. Over the centuries, as the law has been used by the more powerful groups within society to legitimize and to perpetuate their dominance, the forms, the practices, and indeed the language of legal method grew to delineate the exclusive province of an elite band of specialists. These specialists, and these specialists alone, were able to understand and manipulate the legal mechanisms that define our society.

A Practical Guide to Legal Writing and Legal Method advocates an approach to writing and to method that would minimize some of the gratuitous complexity that we find in some legal writing. As

[†] B.A. (Manitoba), LL.B. anticipated 1996 (Dalhousie).

the title to the book implies, it focusses on legal writing and legal method as primarily a pragmatic practice. Any exercise, any form of writing in the legal profession, is first and foremost a goal-directed activity. No matter how complex, or mundane, or socially significant a particular legal problem might be, it always makes demands of a lawyer that he communicate an answer in such a way, and to such people, as will resolve it in the best possible way.

The book recognizes that lawyers are, first and foremost, communicators. As the authors note: "The law is a literary profession; legal writing should and often does approach the level of good literature."¹ While some might dismiss this claim as needlessly sanguine, there is more than a grain of truth in it. The art of writing good literature is the art of taking control of one's audience. The good lawyer must similarly take control of her audience. Whether the form of communication involved be an office memo or an appellate factum, the most effective legal writing takes into account both its audience and its effect on that audience.

This focus on audience differentiates the book from a more traditional, or law-centered (as opposed to reader-centered) view of legal writing. The law-centered school has as its most extreme members those lawyers of the past who carried on their profession in a language that was intentionally designed to differentiate itself from the language of lay people. This law-centred approach, however, did not remain buried in the tomb of the 19th century. Post-modernist legal scholars and increasingly activist appellate justices seem to be re-establishing a law-centred view of legal writing. The latter, in their voluminous judgments, seem determined to use language as a means of finding, and revealing, the secret truths hidden within the vast body of our law. In demolishing such truths, on the other hand, the former group employ a self-referential, jargonized discourse, the impenetrability of which would make a 19th century English Chancery barrister envious.

A Practical Guide to Legal Writing and Legal Method provides a welcome breath of fresh air to anyone who has been subjected for any period of time to the perambulations of the law-centred school of legal writing. It provides in its opening chapters an introduction to basic legal concepts and interpretive skills that ground any good

¹J. C. Dernbach *et al.*, *A Practical Guide to Legal Writing and Legal Method* (Littleton: Fred B. Rothman, 1994) at 174.

writer's ability to get her message across. It then builds on this foundation by discussing basic concepts of legal writing in a surprisingly lucid and focussed manner. This is a book which is not afraid to say that a particular way of articulating a legal opinion is plainly better than another way of articulating the same opinion. The book is full of explicit and concrete examples of what constitutes both good and bad legal writing.

The book's overall message is that writing is an intensely disciplined process that can be reduced to a few basic principles and learned. It is not, as some judges and scholars would treat it, a haphazard, muddled process that must be endured in order to get at the truth. By treating such writing as a discipline, the book paints the legal profession in much less elitist light. This book sees the lawyer not as a sage but as a pragmatic problem-solver.

Perhaps the most endearing quality of the book is the way in which it practices what it preaches. The book is written largely in the second person, creating a tone markedly different from that which one encounters in other works. It is much more interesting as a reader to be told that I should do *x* when I write rather than being told that *x* should be done when I write. The book is a written tutorial, a clear and effective presentation of a topic that is all too often apt to draw yawns. The book, in short, sees itself as an act of communication, and exudes in many places a basic concern that its message is getting across.

In a time when the importance of the written word might seem to be declining, *A Practical Guide to Legal Writing and Legal Method* helps to restore one's faith in the medium of writing as a central component of the lawyer's tools.