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SANDRA DAY O’CONNOR COLLEGE OF LAW

CREATIVE WRITING WORKSHOP
COURSE LAW791N—14270—SPRING SEMESTER 2015

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BARE BONES

"Eloquence may set fire to reason."¹

This is a one-credit, pass/fail, writing workshop. There will be seven two-hour classes on Wednesdays from 10:00 a.m. until 11:55 a.m. in Room 110, starting on January 28, and ending on March 18, 2015. Isn't that a terrible sentence?

Novelists have a lot to teach lawyers about writing. Emotional vibrancy hallmarks the best fiction. Too often, good lawyers strive only for cogency, clarity, and comprehensiveness in their writings. In this class, we will add the compelling qualities of fiction to legal writing, without sacrificing truth. Think of creative legal writing as a cool

¹Oliver Wendell Holmes, *Gillow v. New York*, 268 U.S. 652, 673 (1925).

mountain stream trickling down through a five-page motion to disqualify opposing counsel. It will soothe the angst in your writing, soak up some of the jargon, mellow the legal raspberries, and sprinkle niceness over what you have to do. Do not write in the company of disobedient words. Quit writing pounds of parentheses, give up almost every “that” in your narrative flow. Keep a harem of words and be faithful to each one. Favor a few more than others, but neglect none. Use them more often out of compliment than of necessity. And remember what T.S. Elliot said, “Most editors are failed writers. But so are most writers.”

Our first class will be a lecture/discussion on how creative writing aids and abets legal writing. Three classes will feature in-class writing exercises. The other three will drill down into the writing assignments (Persuasive Statements of Fact; Serious Letters to Clients; Deep Issue Framing; and Memoir). In-class writing will swirl around the value of “story” in legal writing. Hopefully, they will improve your writing, notwithstanding the case law *style*, to which you no doubt have become accustomed. The writing assignments are conspiratorial, designed to open legal nasal passages to the fresh air of *creative* legal writing. Four classes will include a 30-minute talk and write session, followed by 90 minutes of *work shopping* your submissions. Two will be 2-hour workshops and the final class will be fun. Each student will write one 600-word statement of persuasive fact, one 500-word letter to a client, a 125-word Deep Issue Frame, and a 1500-word memoir. The total writing requirement is less than the words used in composing this syllabus.

Success in this class requires two things: You must complete the writing assignments and actively critique your fellow students. If you are unwilling, or unable to do both, this is not the right class for you. The writing assignments are short and the critiques constructive.

You must post your writing assignments on the class Blackboard site no later than noon on the Tuesday preceding Wednesday’s class. All students must read all other student submissions before class. Oral critiques in class will follow the writer’s tradition—we critique the work, not the writer. Students afflicted with writer’s block or unreliable Internet connections should not take this course. Reliable email service is essential. All students should be familiar with the usual process of accessing, reviewing, and posting material on ASU’s Blackboard site.

GOALS

“The thought hath good lips and the quill a good tongue.”²

Lawyers write, so to speak. Most of what we do results in a writing of one sort or another. Besides legal correctness, our writing should also pass literary muster. “Creative nonfiction” is the latest genre in American literary circles. It has barely penetrated the legal world because most lawyers write non-*creative*, nonfiction. In writing our peculiar brand of nonfiction, we disdain *élan vital*. The literary world sees *creative* nonfiction as the fusion of factual prose with *literary* prose. Lawyers create factual summaries and legal briefs but rarely write anything literary, let alone poetic. We write for a variety of purposes—to inform, explain, and advocate. We frequently do all three in the same document. Like our ancestral superiors (appellate court judges), we draw jagged lines between what is informational and what is inspirational. And like lemmings, we lean toward information, avoiding obvious attempts at inspiration. Were we to write more like novelists, we would savor nuance, avoid gratuitous repetition, and look for ways to make our work as inspiring as it is informative. Fiction writers know the most profitable kind of writing is a ransom note. It is short, to the point, attracts immediate attention, and persuasive. It might be the best currency for lawyers writing motions to overworked judges, or letters to opposing counsel.

Infusing nonfiction with stylistic devices, rhetorical flourishes, and lyric phrasing is hardly intuitive. Like all art, it demands time, patience, and practice. Unlike fiction, using *creative* nonfiction techniques in legal writing demands *undeviating* fidelity to accuracy. Unlike fiction, what we write is often time-bound, governed by non-literary rules, and usually addressed to a narrow audience. That does not mean it has to be long, boring, or obtuse.

Stripped of the law’s dust covers, what we do every day is tell stories (usually our client’s stories). Sometimes we advocate our client’s position within, or because of, the story. It is not enough to know the law and to learn the facts. We must see beyond the law and the facts to discover their underlying meaning. Only then can we dramatize that meaning in an interesting, evocative, and informative way. Our greatest duty lies in advocating our client’s position. We advocate to closed audiences. But we should never settle for unstructured, formless, and bland advocacy. Here is the essence of creative

² W. Gurney Burnham, *Putman’s Complete Book of Quotations, Proverbs and Household Words*, 1927

legal writing. Do not state the facts or the law. Write the factual *story* so the reader deduces your legal meaning.

Unlike fiction writers, who only have to worry about privacy torts, defamation, prior restraint, unkind critics, and infliction of emotional distress, lawyers are restricted by ethical rules and procedural structure. But the ethical rules are silent as to *how* we should write. Follow the ethical rules for inclusion, exclusion, truth. Follow procedural rules so your offerings are not struck by a moody judge. Follow the rules of story writing to make your work more interesting and easier to follow. Ignoring ethical constraints could turn your local bar association into your strongest literary critic.

According to the *Oxford English Dictionary*, the work “creativity” did not appear until 1875. As an identifiable genre, *Creative Nonfiction* did not appear in the literary world until the 1980’s. Hopefully, this course will advance the timetable for the fusion of *creative* writing technique with traditional legal writing.

WORKSHOP METHODOLOGY

“Our course of advance, therefore, is neither a straight line nor a curve. It is a series of dots and dashes.”³

A workshop implies student participation in the learning experience. While the course includes short lectures, exercises, and demonstrations, the principal teaching methodology is the workshop. A workshop implies a professional writer working closely with serious-minded students who write regularly and critique one another’s work in class. I will facilitate and provide guidance from both the practicing lawyer’s perspective and that of a working novelist. The focus will always be on better writing. Shopping your work with others does not mean winning or losing a writing contest. A famous writer, Takano Shigiyoshi, said, “It goes without saying that as soon as one cherishes the thought of winning the contest or displaying one’s skill in the technique, swordsmanship is doomed.”

This is not a “writing” class. It is a workshop. We won’t be spending much time on grammar, legal analysis, or other isolated writing sub-skills. I designed this workshop to emphasize the act of creative writing itself, employed in a legal setting. Seven weeks is not nearly enough to *get* the value of *story* in legal writing. That is why we will spend

³ Benjamin N. Cardozo, *The Paradoxes of Legal Science*, 1928.

most of it writing, rather than just listening to me pontificate about its inherent value. It is grounded in short writing assignments tightly focused on one hypothetical legal problem. As in all professional writing workshops, we will emphasize sharing work with the class, peer conferencing, editing, and revision. The only way to *learn to be* a creative legal writer is to *be* a creative legal writer. Realistically, no one can become an accomplished and creative legal writer in just eight weeks. Think of it as the first nine miles in a marathon. If you make it that far, you're bound to finish.

LEGAL RESEARCH

“Every Why Hath a Wherefore.”⁴

This workshop will be driven by good writing, not legal research. The restraints on content and creativity inherent in procedural rules, ethical standards, and professional conventions will be occasionally referred to, but not specifically taught.

ORIGINAL WORK

“Writing is very easy; all you do is sit staring at a blank sheet of paper until the drops of blood form on your forehead.”⁵

All writing must be “original” work. Originality, in this context means that the writer created the work and did not cut and paste it from a form file. It need not be brilliant, or even unique. It ought to be *creative* and exhibit at least minimal artistic qualities. Brevity, simplicity, and cohesion are the nuts and bolts of clear, effective legal writing. Presumably, you already have good legal writing skills because of the high quality, first-year, mandatory legal writing course. This workshop will expand those skills by focusing on the artistic style that differentiates *creative* nonfiction from *other* nonfiction.

Most lawyers can construct short, simple documents that inform the reader. But far too many write longer, more complex, obscure legal documents. Too many write the way judges do. They explain but rarely inspire. They interpret, just barely. They

⁴ Shakespeare, *The Comedy of Errors*, II, 2, 1592-1593.

⁵ Gene Fowler, *Breathing on Your Own*, compiled by Richard Kehl, Darling & Company, 2001.

announce decisions without clarifying the decisional premise. And sadly, they jargon non-lawyer readers as though the real meaning and intent were under seal. For lawyers who want to persuade and inform, *creative* nonfiction technique is the answer. All of us can do better. We can inform, persuade, and occasionally inspire readers by mastering the writer's craft. Lawyers who become masters of *creative* nonfiction will inspire clients, astound opponents, and impress judges.

Lawyers fail to take advantage of the most powerful opportunity they have to persuade and inspire—letters. We write to our clients, opponents, judges, and one another. Mostly, we write lousy letters. Think about the letters you see in novels. They contain greater possibilities of murder than any poison. They inspire by touching that emotion in all of us that makes us want to turn the page. Good letters are never put down, never ignored, and always remembered. The novelist knows that you only write to a person when you are in the same place as your recipient. When a letter is a continuation of presence it is right, but when it confirms your absence, it is intolerable.

GRADING

“An academic might spend thirty years examining student writings without considering whether they are any good at it. An approach the academic is not likely to apply to his or her spouse.”⁶

This is a pass-fail course. There are no “grades.” This is a 700-level course, one where grades ought to be as irrelevant as throwing a rock on the ground and missing. What I hope for in every writing student is to learn from fruitful error. Grades are sterile falsehoods at best, and wrong-way turns at worst. Doing the work and engaging in the critique will get you a “pass.”

CRITIQUES

“A good judge conceives quickly, judges slowly.”⁷

Linguistically, a critic judges, evaluates, and improves the work. The goal here is to become a *creative* writer, not a criticaster. The dictionary definition of workshop

⁶ Rhoda Koenig, *The New Devil's Dictionary—A new version of the original classic*. Globe Pequot Press, 2012, Guilford, CT.

⁷ Rosalind Fergusson, *The Facts on File Dictionary of Proverbs* 1983.

envisions a “seminar discussion group, which emphasizes exchange of ideas and the demonstration and application of techniques, skills, etc.” We will workshop one another’s work in a positive, balanced, and non-personal way. When I critique your work, I will use the standard most editors’ use for fiction: Excellent, Good, Fair, Poor, and Dreadful.⁸ Occasionally, my editors grade my work as *pathetic*. I will not be that cruel to you, even though when I get that grade, I know I deserve it.

If you think it stinks, keep it to yourself. If it is good, tell us why. If you think it can be improved, tell us exactly how. Wherever possible, show us how to modify, rather than telling us it ought to be changed. Students who have not participated in writing workshops might not immediately see the real value in critiquing the work of others.

Most workshops deal with fiction. There is one constant truism in fiction: Every novelist learns more from studying the work of others than from repeating his own mistakes. Most lawyers study the law, but insist on repeating writing mistakes. Work shopping is superior to lecturing, in any writing context.

ASSIGNMENTS AND POSTING SCHEDULE

“If a man will make a purchase of a chance he must abide by the consequences.”⁹

Each student **must** log on to the class Blackboard site every week. I will post announcements, assignments and commentary on Blackboard. The web site will be the preferred method of emailing assignments to other students and faculty. All assignments must be numbered, dated, and timely posted. I will probably send email to everyone every week. Email is important—I do not use Facebook to communicate, although I have what used to be called a “fan page” for some of my books.

LENGTH

“The heaviest thing that is, is one et cetera.”¹⁰

⁸Just kidding, I would never say dreadful. I might say indecorous.

⁹ Sir Richard Richards, English jurist, *Hitchcock v. Giddings*, 4 Price 135, (1817).

¹⁰ John Florio, *First Fruits*, 1578.

Length is not the goal of the writing exercises or the critiquing effort in this course. The total word count for all four assignments this semester is a modest 2,725.¹¹ I often write that much in a single day and I write almost every day of the year. All four writing assignments must be created specifically for this class. For more detail, read the Fall Semester--2015—Class Schedule and Writing Assignment.

Creative writing requires discipline. All lawyers are self-starters but that is not enough for this class. Lawyers who aspire to *creative* writing must stop before they are finished. Then, you must “engage the beast.” The writer’s beast is “revision.” We rewrite *and* revise legal documents to cut the inevitable lawyer-like chatter so beloved by judges, and senior partners.

This syllabus contains about 3,525. It is longer than the total word count in all four assignments. Most professional writers turn out 5,000 creatively written words every week. Some lawyers turn that much every day, *albeit* non-creatively. The writing goal in this workshop is easily met by scrutinizing a few pages closely enough. We need not see the whole of a legal document to determine its creative arc. By dropping an adverb here and clarifying a noun there, we can improve any document, just by looking to the first page. We must whet, not satiate, the reader’s appetite.

CONFIGURATION

“Words pass from men lightly.”¹²

Please type the following on the first page of each assignment: (1) Your name, (2) Date, and (3) Assignment Number. All work should be **double-spaced** with a ragged right margin (do not right justify). One-inch margins are sufficient. Use a plain font. Page numbering should be consecutive.

READING

“A lawyer who has not studied economics and sociology is very apt to become a public enemy.”¹³

¹¹ It varies from one writer to another, just like body weight. This is a diet course, not a five-course dinner.

¹² Sir John Eardly Wilmont, Chief Justice, *Pillians v. Van Mierop*, 3 Burr. Part IV. (1671).

¹³ Louis D. Brandies, 1856-1935, Samuel J. Konefsky, *The Legacy of Holmes and Brandies*, (1956).

Lawyers who do not read are as doomed to failure as writers are. While he was not speaking *about* lawyers (since he rarely spoke *to* them), *Oscar Wilde* famously said, “It is what you read when you don’t have to that determines what you will be when you can’t help it.” Mr. Wilde recognized the beast, and the genius in lawyers, when he said, “Lawyers always argue and they always win; the bastards.”

While reading assignments will be minimal, students serious about becoming good writers will strive for creativity, and substance, in their work. Reading novels, essays, opinions, and *creative* nonfiction is required, *albeit* unchecked.

COURSE MATERIALS

“Books must follow sciences, and not sciences books.”¹⁴

This is a writing workshop. There is a “required” text. This year we will use Roy Peter Clark’s *“Writing Tools—50 Essential Strategies for Every Writer.”* It will be available at the ASU-Tempe Bookstore. I think it will be priced at approximately \$13 (not bad for a law course). I picked this book because Mr. Clark understands something elementary about writing. As he said on page four, “this book invites you to think of writing less as a special talent and more as a purposeful craft . . . this book is your toolbox . . . these tools will help you to dispel your writing inhibitions, making the craft central to the way you see the world.”

Lawyers see the world differently from all other professions. You already know that. The workshop, the tools in the required text, and a little effort on your part will make you a better lawyer. That’s my goal for you. All teaching notes, critique guides, and other assorted writings will be posted to the Class Blackboard site before our first class on January 28, 2015.

None of the following books is required reading. Having reviewed nearly all of the available textbooks for legal writing courses, I recommend *Legal Writing In Plain English*, by Bryan Garner, Univ. of Chicago Press, 2001. Prof. Garner is a working lawyer, a widely published author, and a nationally recognized legal writing teacher. For those

¹⁴ Francis Bacon, 1561-1626, *A Proposal for Amending The Laws of England*.

students with more time and a broader focus, I recommend the following be added to your writer's toolbox.

1. *The Elements of Style*, Strunk and White, The Macmillan Company, NY, 1959.
2. *Garner's Modern American Usage*, Bryan A. Garner, First Edition, Oxford University Press, 2003.
3. *A Dictionary of Modern Legal Usage*, by Bryan A. Garner, Oxford University Press, NY 1987
4. *The Quotable Lawyer*, by David Shrager and Elizabeth Frost, Facts On File, Inc. NY 1986
5. *Legal Thesaurus*, by William C. Burton, MacMillian Publishing Company, NY, 1980
6. *The First Five Pages, A Writer's Guide to Staying Out of the Rejection Pile*, by Noah Lukeman, A Fireside Book, Simon & Schuster, NY, 2000.
7. *Telling True Stories—A Nonfiction Writer's Guide*, The Nieman Foundation at Harvard University, edited by Mark Kramer and Wendy Call; published by the Penguin Group, 2007.
8. *Writing Creative Nonfiction—Instruction and Insights from the Teachers of the Associated Writing Programs*, edited by Carolyn Forche and Philip Gerard, Story Press, Cincinnati, Ohio, 2001.
9. *The Ethical Trial Lawyer*, by Gary L. Stuart, State Bar of Arizona Press, 1994.
10. *The Gallup 14*, a novel, by Gary L. Stuart, UNM Press, 2001.
11. *Miranda—The Story of America's Right to Remain Silent*, by Gary L. Stuart, Univ. of Arizona Press, 2004.
12. *Aim For The Mayor—Echoes From Wounded Knee*, a novel by Gary L. Stuart, Xlibris, 2008.
13. *Innocent Until Interrogated—The Story of the Arizona Buddhist Temple Massacre and the Tucson Four*, by Gary L. Stuart, Univ. of Arizona Press, 2010.
14. *Their Word is Law; bestselling lawyer-novelists talk about their craft*, Stephen M. Murphy, Berkley Books, NY, 2002.

CONTACT

“Defeat is education. It is a step to something better.”¹⁵

I live and work in Phoenix. I will be available for personal consultations most Wednesdays after class, either in Charlie’s Café, or in a room not yet disclosed, even to me. You can usually reach me by email or telephone. The addresses, numbers, and URL’s are:

- (1) Email: gary.stuart@asu.edu or gstuart@keyed.com
- (2) Snail Mail: 7000 N. 16th St., Ste. 120, PMB 470, Phoenix, AZ 85020
- (3) Home, Office, Cell, Vacation, Voice Mail, etc.: 602-281-1111
- (4) Fax: 602-325-8004
- (4) Toll free: 1-866-670-6122
- (5) WebSites: www.garylstuart.com
www.ethicslaw.com
www.thegallup14.com
www.aimforthemayor.com
www.innocentuntilinterrogated.com
www.azfinestlawyers.org

EXPIRY

“The present is the only thing that has no end.”¹⁶

Anais Nun said, “We write to taste life twice.” As I said in the beginning, “lawyers write, so to speak.”

¹⁵ Louis Nizer, *My Life In Court*, 1960.

¹⁶ Erwin Schrodinger, as quoted in *Breathing On Your Own; Quotations For Independent Thinkers*, by Richard Kehl, Darling & Company, Seattle WA (2001)