

ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS

by

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with foreword by

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FOREWORD, BY JUDGE ALEX KOZINSKI

A few years ago I interviewed a candidate for a clerkship. He had record-breaking grades from a name-brand law school and his recommenders sprinkled their letters with phrases like “Kozinski clone” and “better even than you.” This kid was hot.

His interview went well, and I had pretty much made up my mind to hire him on the spot, when I popped a fateful question: “So, have you decided on the topic for your law review note?”

“It’s done,” the candidate replied. And, with a flourish, he pulled an inch-thick document from his briefcase and plopped it on my desk. Impressed, I picked it up and read the title page: “The Alienability and Devisability of Possibilities of Reverter and Rights of Entry.”

After making sure this wasn’t a joke, I started wondering why someone would write a piece on such an arcane topic. Maybe this kid wasn’t so smart after all. I decided I had better read the piece before making a hiring decision.

After the applicant left, his article sat on the corner of my desk like a brick. Every so often, I’d pick it up, leaf through it and try to read it, but with no success. It was well-written enough; the sentences were easy to understand and followed one another in seemingly logical fashion. But the effort was pointless because the subject matter was of absolutely no interest to me. Instead, my mind wandered to doubts about the author. How did he come to write on such a desiccated topic? Under that veneer of brilliance, was there a kook trying to get out? Could I really trust his judgment as to the countless sensitive issues he would have to confront during his clerkship? Would he constantly aim for the capillary and miss the jugular?

It is difficult to overstate the importance of a written paper for a young lawyer’s career, especially if the piece is published. Grades, of necessity, are somewhat grainy and subjective; is an A— that much better than a B+? Letters of recommendation can be more useful, but they still rely on someone else’s judgment, and they often have a stale booster quality about them. Words like “fabulous” and “extraordinary” lose their force by dint of repetition—though “Kozinski clone” is still pretty rare.

A paper is very different. It is the applicant’s raw work product, unfiltered through a third-party evaluator. By reading it, you can personally evaluate the student’s writing, research, logic and judgment. Are

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the sentences sleek and lithe or ponderous and convoluted? Does he lay out his argument in a logical fashion, and does he anticipate and refute objections? Is the topic broad enough to be useful, yet narrow enough to be adequately covered? Is it persuasive? Is it fun to read? Writing a paper engages so much of the lawyer's art that no other predictor of likely success on the job comes close. A well-written, well-researched, thoughtful paper can clinch that law firm job or clerkship. It is indispensable if you aim to teach.

Published student papers can also be quite useful and influential in the development of the law. A few law review notes and comments become classics cited widely by lawyers, courts and academics. Many more provide a useful service, such as a solid body of research or an important insight into a developing area. Most, however, are read by no one beyond the student's immediate family and cause hardly an eddy among the currents of the law.

Why do so many published student papers fail in their essential purpose? (The same question might well be asked about non-student academic writing.) The simple answer is that most students have no clue what to write about, or how to go about writing it. Finding a useful and interesting topic; determining the scope of the paper; developing a thesis and testing its viability; avoiding sudden death through preemption; and getting it placed in the best possible journal—these are among the tasks that most students aren't trained to perform. My applicant, smart though he was, went off track because no one showed him where the track was or how to stay on it. Many students make the same mistake every year.

This book fills a void in the legal literature: It teaches students how to go about finding a topic and developing it into a useful, interesting, publishable piece. It gives detailed and very helpful instructions for every aspect of the writing, research and publication process. And it comes from the keyboard of someone who has authored articles on a dizzying variety of legal topics and is widely regarded as one of the brightest lights in legal academia.

But I digress.

I pondered the fate of my applicant for some weeks and never did get myself to read more than a few lines of his dreary paper. Finally I called and offered him a clerkship with a strong hint—not quite a condition—that he drop the paper in the nearest trash can and start from scratch. I explained to him what was wrong with it, and what a successful paper should look like. “You can do whatever you want,” I told him, “but if you should have the misfortune of getting this dog

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published, it will only drag you down when you apply for a Supreme Court clerkship or a position as a law professor.”

The applicant gratefully accepted the advice. He chucked the “Possibilities of Reverter” paper and went about developing a new topic. Some months later, he produced a dynamite piece that became one of the seminal published articles in a developing area of the law. Eventually, he did clerk for the Supreme Court and has since become a widely respected and often quoted legal academic. His name is Eugene Volokh.

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