

LEGAL
REASONING
and
LEGAL
WRITING

STRUCTURE,
STRATEGY,
AND STYLE

Second Edition

Richard K. Neumann, Jr.

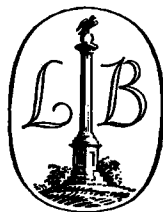
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LEGAL REASONING AND LEGAL WRITING

**Structure, Strategy,
and Style**

SECOND EDITION

Richard K. Neumann, Jr.
Professor of Law
Hofstra University



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**LEGAL REASONING
AND LEGAL WRITING**

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for

*Richard K. Neumann, Sr. and
Marjorie Batter Neumann,*

*who taught everything
on which this book is based*

The power of clear statement is the great power at the bar.

—*Daniel Webster*
(also attributed to
Rufus Choate,
Judah P. Benjamin,
and perhaps others)

Preface

This is a text both for first-year legal writing and moot court programs and for second-year appellate advocacy courses and competitions. Most students are so challenged by the writing and reasoning problems in these settings that they benefit from a unified treatment through progressively more difficult stages of instruction on closely related skills. A teacher in a first-year program can use a large number of the book's features to teach legal writing and the reasoning that goes into it. In a second-year appellate advocacy course or competition, the text shows students how to carry that instruction to a much more sophisticated level. The text has been designed so that it can be used in the first year alone, in the first and second years together, or in the second year alone.

It has become a commonplace that writing is better learned when combined with at least some instruction in legal reasoning. But it is also true that legal reasoning is learned more thoroughly when combined with legal writing. Because the act of writing forces the writer to test thought in order to express it fully and precisely, complex analysis cannot be said to be complete until it becomes written and written well.

The text focuses on constructing proof of a conclusion of law and teaches format, style, and grammar collaterally. The goal is to help students learn how to make the kind of writing decisions that center on the need to prove analysis. Most students have substantial difficulties learning how to construct proof. If format and style receive primary emphasis, the problem is compounded because the student is invited to mimic the customary appearance of a document, rather than to think through its content and inner logic. Moreover, format comes easier to students who have already learned the dynamics of proof, and legal writing's heightened requirements of style and grammar may be easier to accept when they are explained as ways of

clarifying proof. And as a skill, style is much more valuable when rewriting second and third drafts than in producing a first draft.

Part I of the text introduces students to the court and litigation systems, the structure and operation of rules of law, judicial opinions, and methods of briefing them. Legal writing in general is introduced in Part II. Part III explains how to write an office memorandum; organize proof of a conclusion of law; use authority; analyze facts; and use paragraphing, style, and citations. Part IV helps students with their first law school examinations. Part V introduces the advocacy skills of theory development, argumentation, and accurate handling of procedural postures. Writing a persuasive motion memorandum is covered in Part VI; appellate briefs in Part VII; and oral argument in Part VIII.

On the inside covers of the book is a list of questions that students should ask themselves while working through successive drafts of a document. Each question represents a recurring problem in student writing—the sort that a teacher marks over and over again on student papers. Students can use these questions to make sure they have attended to likely problems. And teachers can use them to ease the burden of writing so many comments on student papers. Rather than write the same or a similar comment repetitiously, a teacher can circle the problem passage on the student's paper and write the question number ("8-A," which would be in Chapter 8, for example) in the margin. In the corresponding section in the chapter, the student will find a complete explanation of the problem, what causes it, and how to fix it.

Richard K. Neumann, Jr.

March 1994

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Summary of Contents

<i>Preface</i>	<i>xxi</i>
<i>Acknowledgments</i>	<i>xxiii</i>
PART I INTRODUCTION TO LAW AND ITS STUDY	1
Chapter 1 An Introduction to American Law	3
Chapter 2 Rule-Based Reasoning	15
Chapter 3 An Introduction to Judicial Opinions	27
Chapter 4 Briefing Cases	37
PART II INTRODUCTION TO LEGAL WRITING	47
Chapter 5 The Art of Legal Writing	49
Chapter 6 The Process of Writing	55
PART III OFFICE MEMORANDA	65
Chapter 7 Office Memoranda	67
Chapter 8 Predictive Writing	71
Chapter 9 How to Organize Proof of a Conclusion of Law	83
Chapter 10 Selecting Authority	103
Chapter 11 Working with Precedent	119
Chapter 12 Working with Statutes	137
Chapter 13 Working with Facts	161
Chapter 14 Paragraphing	173

Chapter 15	Effective Style	183
Chapter 16	Citations and Quotations	207
PART IV LAW SCHOOL EXAMINATIONS		227
Chapter 17	How to Write Examinations	229
PART V THE SHIFT TO PERSUASION		235
Chapter 18	Developing a Persuasive Theory	237
Chapter 19	Developing Persuasive Arguments	253
Chapter 20	Handling the Procedural Posture	271
PART VI MOTION MEMORANDA		283
Chapter 21	Motion Memoranda	285
Chapter 22	Point Headings and Sub-Headings	289
Chapter 23	Statements of the Case	301
Chapter 24	Questions Presented	315
PART VII APPELLATE BRIEFS		325
Chapter 25	Appellate Practice	327
Chapter 26	Appellate Briefs	339
Chapter 27	Writing the Appellate Brief	347
PART VIII INTO THE COURTROOM		357
Chapter 28	Oral Argument	359
APPENDICES		381
Appendix A	Basic Legal Usage	383
Appendix B	24 Rules of Punctuation	389
Appendix C	Sample Office Memorandum	401
Appendix D	Sample Motion Memorandum	409
Appendix E	Sample Appellant's Brief	423
Appendix F	Sample Appellee's Brief	453
<i>Index</i>		475

Table of Contents

<i>Preface</i>	<i>xxi</i>
<i>Acknowledgments</i>	<i>xxiii</i>

I

INTRODUCTION TO LAW AND ITS STUDY	1
1. An Introduction to American Law	3
§1.1 The Origin of Common Law	3
§1.2 How American Courts Are Organized	6
§1.2.1 State Courts	6
§1.2.2 Federal Courts	7
§1.3 An Overview of the Litigation Process	8
§1.3.1 Phase 1: Pleadings and Service of Process	8
§1.3.2 Phase 2: Between Pleadings and Trial	9
§1.3.3 Phase 3: Trial	10
§1.3.4 Phase 4: Post-Trial Motions	11
§1.3.5 Phase 5: Appeal	12
§1.3.6 Phase 6: Post-Appeal Proceedings	12
§1.3.7 Criminal Cases	12
§1.4 The Importance of Understanding Procedure	13
§1.5 The Adversary System	13

2. Rule-Based Reasoning	15
§2.1 The Inner Structure of a Rule	15
§2.2 Organizing the Application of a Rule	20
§2.3 Some Things to Be Careful About with Rules	22
§2.4 Causes of Action and Affirmative Defenses	23
3. An Introduction to Judicial Opinions	27
§3.1 The Anatomy of Opinions	27
Exercise I. Dissecting the Text of <i>Meints v. Huntington</i>	28
§3.2 The Interdependence Among Facts, Issues, and Rules	32
Exercise II. Analyzing the Meaning of <i>Meints v. Huntington</i>	36
4. Briefing Cases	37
§4.1 Introduction	37
§4.2 How to Brief a Case	37
Exercise. Briefing <i>Eilers v. Coy</i>	43
II	
INTRODUCTION TO LEGAL WRITING	47
5. The Art of Legal Writing	49
§5.1 The Language as a Professional Tool	49
§5.2 Predictive Writing and Persuasive Writing	51
§5.3 The Art Forms of Legal Writing	53
6. The Process of Writing	55
§6.1 Writing in Four Stages	55
§6.2 Analyzing	55
§6.3 Organizing	57
§6.4 The First Draft	58
§6.5 Rewriting	59
§6.6 Some General Advice about Writing	60

III	
OFFICE MEMORANDA	65
7. Office Memoranda	67
§7.1 Office Memorandum Format	67
§7.2 Writing an Office Memorandum	70
8. Predictive Writing	71
§8.1 How to Predict	71
§8.2 How to Test Your Writing for Predictiveness	76
Exercise I. Nansen and Byrd	78
Exercise II. The Hartleys and Debenture	80
9. How to Organize Proof of a Conclusion of Law	83
§9.1 A Paradigm for Structuring Proof	83
§9.2 Why Readers Prefer This Type of Organization	85
§9.3 How to Vary the Paradigm to Suit Your Needs	86
§9.3.1 Variations of Sequence	86
§9.3.2 Variations in Depth	87
§9.3.3 Combinations of Separately Structured Explanations	91
§9.4 How to Start Working with the Paradigm	93
§9.5 How to Test Your Writing for Effective Organization	95
Exercise I. Teddy Washburn's Gun (Analyzing and Organizing)	98
Exercise II. Griggs and the Anti-Bandit (Checking Organization During Rewriting)	101
10. Selecting Authority	103
§10.1 Introduction	103
§10.2 The Hierarchy of Authority	104
§10.3 How Courts Use Dicta	107
§10.4 How Courts React to Foreign Precedent	108
§10.5 How to Use Foreign Precedent and Other Nonmandatory Authority to Fill a Gap in Local Law	110
§10.5.1 Laying the Foundation	110
§10.5.2 Filling the Gap	112
§10.6 How to Select Nonmandatory Precedent	113
§10.7 How to Work Effectively in the Library	115
Exercise. The Hierarchy of Authority	117

11. Working with Precedent	119
§11.1 Eight Skills for Working with Precedent	119
§11.2 Formulating a Variety of Rules from the Same Precedent	120
§11.3 Analogizing and Distinguishing	121
§11.4 Eliciting Policy from Precedent	122
§11.5 Synthesis and Reconciliation	123
§11.6 Testing for Realism and Marketability	125
Instructions for Exercises I and II	125
Exercise I. The Allegheny Steel Corporation	126
Exercise II. Emil Risberg's Diary	130
12. Working with Statutes	137
§12.1 Ten Tools of Statutory Interpretation	137
§12.2 How to Present Statutory Analysis	147
Instructions for Exercises I and II	149
Exercise I. The Ironwood Tract	150
Exercise II. Pappas and Ziegler at Sal's Auto Parts	154
13. Working with Facts	161
§13.1 What Is a Fact?	161
§13.2 Identifying Determinative Facts	164
§13.3 Building Inferences from Facts	165
§13.4 Identifying Hidden and Unsupportable Factual Assumptions	168
Exercise I. The Menu at the Courthouse Cafe	170
Exercise II. Welty's State of Mind	171
14. Paragraphing	173
§14.1 How Paragraphing Reveals Your Organization	173
§14.2 Probative Paragraphs and Descriptive Paragraphs	174
§14.3 Thesis Sentences, Topic Sentences, and Transition Sentences	175
§14.4 The Two Most Common Ways of Botching the Beginning of a Paragraph	176
§14.5 How to Test Your Writing for Effective Paragraphing	178
Exercise I. The First Weeks of Law School (Probative and Descriptive Paragraphs)	180