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# Judicial Opinion Writing: An Annotated Bibliography

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# JUDICIAL OPINION WRITING: AN ANNOTATED BIBLIOGRAPHY

*Ruth C. Vance\**

## INTRODUCTION

This Bibliography seeks to supply legal writing professors, students, judicial law clerks, and judges with a list of resources that will be helpful for both opinion writing and for those preparing to work with or write for judges. The number of law school courses offered in judicial opinion writing has increased,<sup>1</sup> along with the total number of elective courses in legal writing.<sup>2</sup> The growth of judicial opinion writing courses, in particular, may be due to the rise in popularity of judicial externships.<sup>3</sup> Several schools have added a classroom component to externships in response to rules of the American Association of Law Schools (AALS)<sup>4</sup> and the American Bar Association (ABA).<sup>5</sup>

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\* © 2011, Ruth C. Vance. All rights reserved. Professor of Law and Director of the Legal Writing Program, Valparaiso University School of Law. I want to thank the ABA Communication Skills Committee Section of Legal Education and Admissions to the Bar for its support of this project. Special thanks to Suzanne E. Rowe, Chair of the Communication Skills Committee, and Craig Smith for their guidance and suggestions. Thanks to Camille deJorna, ABA Associate Consultant Section on Legal Education, and to Linda H. Edwards for their assistance and advice in the early stages of this project. Many thanks to my research assistant, Sergey Grechukhin, and to my colleague, Susan P. Stuart.

1. ALWD & Leg. Writing Inst., *2010 Survey Results*, at iii, question 33, [http://www.alwd.org/surveys/survey\\_results/2010\\_Survey\\_Results.pdf](http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf) (The 2010 Survey had a 96.5% response rate with 191 out of 198 schools responding and showed a judicial opinion writing course offered at 18 law schools in 2007 and at 30 schools in 2010).

2. *Id.* at question 32 (showing 95 elective legal writing courses being offered in 2007 with a steady increase to 115 courses in 2010).

3. Ctr. for Study of Applied Leg. Educ. (CSALE), *Report on the 2007–2008 Survey*, questions 3, 4, 12, 13, [http://www.csale.org/files/CSALE.07-08.Survey\\_Report.pdf](http://www.csale.org/files/CSALE.07-08.Survey_Report.pdf) (last accessed Sept. 14, 2010) (This survey had a 77% response rate with 145 out of 188 fully accredited United States law schools responding and showed judicial externships as the most popular externship at 131 schools that offer field placement programs; 62.5% of those schools reported that within the last five years demand for all field placement programs had increased, and 30.5% reported a constant demand over the same time period.).

4. *2005 Handbook*, Regulation 6-7.10(c) (Assn. of Am. L. Schs. 2005) (available at [http://www.aals.org/about\\_handbook\\_regulations.php#6](http://www.aals.org/about_handbook_regulations.php#6) (encouraging member schools “to include an academic component designed to prepare students to participate effectively as

Obvious goals for a judicial opinion writing course include training for judicial externs and future judicial law clerks. Besides teaching the art of opinion writing, this training would include teaching students how to write bench memos and the other documents necessary in trial court clerkships. In addition to training externs and clerks, an upper-level class in judicial opinion writing provides an opportunity for students to hone their skills in writing for a particular audience, structuring and organizing, analyzing, and using rhetorical devices introduced during the first-year writing course through a different type of document.<sup>6</sup> Such a course can cause students to look at the legal process from a different perspective and to become better critical readers and users of opinions by writing them.<sup>7</sup> Thus, other goals of a judicial opinion writing course can include learning about the audiences of judicial opinions and the perspective judges bring to their opinion writing.

While several resources aimed at training new and experienced judges to write effective opinions exist, there are few resources written specifically for law students. The state and federal judiciary have organizations that specialize in training judges, such as the ABA's Appellate Judges Conference<sup>8</sup> and the Federal Judicial Center.<sup>9</sup> Both of these organizations provide seminars in judicial opinion writing and have published helpful references.<sup>10</sup> The interest in judicial opinion writing courses in law

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externs and to enable students to derive substantial educational benefits from their externship").

5. ABA Sec. Leg. Educ. & Admis. to B., *2009–2010 ABA Standards and Rules of Procedure for Approval of Law Schools*, at stand. 305(e)(7) (ABA 2009–2010) (available at <http://www.abanet.org/legaled/standards/standards.html>) (requiring “opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection”).

6. Carrie W. Teitcher, *Legal Writing Beyond Memos and Briefs: An Annotated Bibliography*, 5 J. ALWD 133, 145 (2008).

7. Commun. Skills Comm., Sec. of Leg. Educ. & Admis. to B., *Sourcebook on Legal Writing Programs* 183–184 (Eric B. Easton ed., 2d ed., ABA 2006) [hereinafter *Sourcebook*] (giving ideas for judicial opinion writing course content).

8. ABA Jud. Div. App. JJ. Conf., *Appellate Judges Conference*, [http://www.americanbar.org/groups/judicial/conferences/appellate\\_judges/resources.html](http://www.americanbar.org/groups/judicial/conferences/appellate_judges/resources.html) (accessed Apr. 15, 2011).

9. Fed. Jud. Ctr., *State-Federal Judicial Education Programs*, <http://www.fjc.gov/fsje/home.nsf> (accessed Apr. 15, 2011).

10. See ABA Jud. Div. App. JJ. Conf., *supra* n. 8; Fed. Jud. Ctr.; *supra* n. 9; see e.g. ABA App. Judges Conf. Jud. Administration Div., *Judicial Opinion Writing Manual* (West

schools has developed more recently.<sup>11</sup> In fact, law professors teaching these courses have used material designed for judges and their law clerks, assigned readings, their own materials, or some combination of these three. Seeing the need for a text aimed at law students, several law professors who teach legal writing, and judicial opinion writing specifically, have written<sup>12</sup> or are writing such a text.<sup>13</sup>

The purpose of this annotated Bibliography is to assist professional legal writers in easily locating writing about judicial opinion writing and deciding what might be useful for them. The annotations are intended to speed the process of selecting relevant resources. Professors can use this Bibliography in planning a course for upper-level students, be it advanced legal writing, a seminar for future judicial law clerks, or a judicial externship classroom component. Instructors of new and experienced judges can find additional materials here, and judges can find additional references for their chambers and resources for their clerks.

The Bibliography includes varied types of resources that, hopefully, will be helpful for several purposes. The “how-to” materials will assist legal writers in improving their organization and legal analysis skills.<sup>14</sup> The more theoretical works can be helpful in judicial process courses and seminars for law students and judges.<sup>15</sup> Writings that explain the workings of chambers provide the context in which opinions are written and are useful for current externs, future and new clerks, and new judges.<sup>16</sup>

Much has been written about judicial opinions, so selections had to be limited. Because my focus was on the craft of drafting an opinion primarily for courses on judicial opinion writing, I leaned toward “how-to” resources. However, some more theoretic-

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Publg. Co. 1991); Fed. Jud. Ctr., *Judicial Writing Manual* (Fed. Jud. Ctr. 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/\\$file/judiwrit.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/$file/judiwrit.pdf)).

11. *Sourcebook*, *supra* n. 7, at 183 (stating that judicial opinion writing is a recent addition to advanced legal writing courses).

12. Mary L. Dunnewold et al., *Judicial Clerkships: A Practical Guide* (Carolina Academic Press 2010); Aliza Milner, *Judicial Clerkships: Legal Methods in Motion* (LexisNexis 2011).

13. Jennifer Sheppard, *In Chambers: A Guide for Judicial Clerks and Externs* (Aspen Publishers forthcoming).

14. *E.g. infra* annotations 5, 23.

15. *E.g. infra* annotations 6, 44(B).

16. *E.g. infra* annotations 4, 11.

cal works are also included to provide a basis for reflecting about and discussing the importance of the craft and the function of opinions. To place opinions in their context, writings about their drafters are added. The resources were limited to fairly recent ones. Each annotation provides an overview of the source content and its apparent audience. Included with a critique is my opinion regarding which course goals the resource would help fulfill.<sup>17</sup>

Part I of this Bibliography consists of a citation list of the resources divided into books and book chapters, articles, and symposia. This will make it easier to quickly scan the entire listing and will give the number of the resource. Part II contains the same listing with annotations added.

### *I. UNANNOTATED BIBLIOGRAPHY*

#### Books and Book Chapters

1. ABA App. Judges Conf., Jud. Administration Div., *Judicial Opinion Writing Manual* (West Publ. Co. 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/\\$file/judiwrit.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/$file/judiwrit.pdf)).

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17. To assist the user in quickly deciding which resources may be worth a closer look, each annotation ends with a list of the resource's purposes and a list of appropriate courses for use of the resource, if any. These categories merely provide suggestions to the user. The categories are listed in bold according to the following abbreviations:

#### Resource Type Abbreviations

How-to	<b>HT</b>
Theoretical	<b>T</b>
Working in Chambers	<b>Context</b>
Ethics	<b>Ethics</b>
Reference	<b>Ref</b>

#### Course Abbreviations

Training course for judicial externs	<b>E</b>
Training course for future judicial law clerks	<b>C</b>
Upper-level legal writing course with judicial opinion writing component	<b>UL LW</b>
Judicial process course	<b>JP</b>
General judicial seminar	<b>JS</b>
Judicial seminar for new judges	<b>JS new</b>

2. Ruggero J. Aldisert, *Opinion Writing* (2d ed., AuthorHouse 2009).
3. Calvert G. Chipchase, *Federal District Court: Law Clerk Handbook* (ABA 2007).
4. Rebecca A. Cochran, *Judicial Externships: The Clinic inside the Courthouse* (3d ed., LexisNexis 2005).
5. Mary L. Dunnewold et al., *Judicial Clerkships: A Practical Guide* (Carolina Academic Press 2010).
6. Elizabeth Fajans et al., *Writing for Law Practice* ch. 10 (2d ed., Found. Press 2010).
7. Fed. Jud. Ctr., *Judicial Writing Manual* (Sylvan A. Sobel ed., Fed. Jud. Ctr. 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/\\$file/judiwrit.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/$file/judiwrit.pdf)).
8. Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 23 (2d ed., Thomson/West 2006).
9. Joyce J. George, *Judicial Opinion Writing Handbook* (5th ed., William S. Hein & Co. 2007).
10. Inst. of Jud. Administration N.Y.U., *Appellate Judicial Opinions* (Robert A. Leflar ed., West Publ. Co. 1974).
11. *Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges* (Sylvan A. Sobel ed., 2d ed., Fed. Jud. Ctr. 2007) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbkbk.pdf/\\$file/lawclhbkbk.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbkbk.pdf/$file/lawclhbkbk.pdf)).
12. Joseph L. Lemon, Jr., *Federal Appellate Court: Law Clerk Handbook* (ABA 2007).
13. Aliza Milner, *Judicial Clerkships: Legal Methods in Motion* (LexisNexis 2011).
14. William D. Popkin, *Evolution of the Judicial Opinion: Institutional and Individual Styles* (N.Y.U. Press 2007).
15. Edward D. Re, *Appellate Opinion Writing* (Fed. Jud. Ctr. 1975) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/appellop.pdf/\\$file/appellop.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/appellop.pdf/$file/appellop.pdf)).
16. Jennifer Sheppard, *In Chambers: A Guide for Judicial Clerks and Externs* (Aspen Publishers forthcoming).
17. Louis J. Sirico, Jr., *Judging: A Book for Student Clerks* (LexisNexis 2002).
18. Lawrence M. Solan, *The Language of Judges* (U. Chi. Press 1993).

## Articles

19. Ruggero J. Aldisert et al., *Opinion Writing and Opinion Readers*, 31 *Cardozo L. Rev.* 1 (2009).
20. Samuel A. Alito, Jr. et al., Panel Remarks, *The Second Conversation with Justice Samuel A. Alito, Jr.: Lawyering and the Craft of Judicial Opinion Writing*, 37 *Pepp. L. Rev.* 33 (2009).
21. Richard B. Cappalli, *Improving Appellate Opinions*, 83 *Judicature* 286 (May/June 2000).
22. Charles G. Douglas, III, *How to Write a Concise Opinion*, 22 *Judges J.* 4 (Spring 1983).
23. Elizabeth Ahlgren Francis, *The Elements of Ordered Opinion Writing*, 38 *Judges J.* 8 (Spring 1999).
24. Bryan A. Garner, *Clearing the Cobwebs from Judicial Opinions*, 38 *Ct. Rev.* 4 (Summer 2001).
25. Thomas Gibbs Gee, *A Few of Wisdom's Idiosyncrasies and a Few of Ignorance's: A Judicial Style Sheet*, 1 *Scribes J. Leg. Writing* 55 (1990).
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29. Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 *Scribes J. Leg. Writing* 1 (2003–2004).
30. Joseph Kimble, *First Things First: The Lost Art of Summarizing*, 38 *Ct. Rev.* 30 (Summer 2001).
31. Richard B. Klein, *Opinion Writing Assistance Involving Law Clerks: What I Tell Them*, 34 *Judges J.* 33 (Summer 1995).
32. Gerald Lebovits & Lucero Ramirez Hidalgo, *Advice to Law Clerks: How to Draft Your First Judicial Opinion*, 36 *Westchester B.J.* 29 (Spring-Summer 2009).
33. Gerald Lebovits et al., *Ethical Judicial Opinion Writing*, 21 *Geo. J. Leg. Ethics* 237 (2008).
34. Robert A. Leflar, *Honest Judicial Opinions*, 74 *Nw. U. L. Rev.* 721 (1979).

35. Robert A. Lefflar, *Quality in Judicial Opinions*, 3 Pace L. Rev. 579 (1983).
36. Andrea McArdle, *The Socioeconomics of Justice: The Perspective from the Law School Classroom*, 9 Intl. Rev. of Constitutionalism 193 (2009).
37. Abner J. Mikva, *For Whom Judges Write*, 61 S. Cal. L. Rev. 1357 (1988).
38. Douglas K. Norman, *An Outline for Appellate Opinion Writing*, 39 Judges J. 26 (Summer 2000).
39. Jennifer Sheppard, *The "Write" Way: A Judicial Clerk's Guide to Writing for the Court*, 38 U. Balt. L. Rev. 73 (2008).
40. Timothy P. Terrell, *Organizing Clear Opinions: Beyond Logic to Coherence and Character*, 38 Judges J. 4 (Spring 1999).
41. Nancy A. Wanderer, *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 Me. L. Rev. 47 (2002).
42. Charles R. Wilson, *How Opinions Are Developed in the United States Court of Appeals of the Eleventh Circuit*, 32 Stetson L. Rev. 247 (2003).
43. Michael J. Yelnosky, *If You Write It, (S)he Will Come: Judicial Opinions, Metaphors, Baseball, and "The Sex Stuff"*, 28 Conn. L. Rev. 813 (1996).

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- B. Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writing*, 62 U. Chi. L. Rev. 1371 (1995).
- C. Richard A. Posner, *Judges' Writing Styles (and Do They Matter?)*, 62 U. Chi. L. Rev. 1421 (1995).
- D. Patricia M. Wald, *A Reply to Judge Posner*, 62 U. Chi. L. Rev. 1451 (1995).
- E. Frederick Schauer, *Opinions as Rules*, 62 U. Chi. L. Rev. 1455 (1995).



- F. Martha C. Nussbaum, *Poets as Judges: Judicial Rhetoric and the Legal Imagination*, 62 U. Chi. L. Rev. 1477 (1995).
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- B. Eugene A. Wright, *Observations of an Appellate Judge: The Use of Law Clerks*, 26 Vand. L. Rev. 1179 (1973).
- C. Robert Braucher, *Choosing Law Clerks in Massachusetts*, 26 Vand. L. Rev. 1197 (1973).
- D. George Rose Smith, *A Primer of Opinion Writing for Law Clerks*, 26 Vand. L. Rev. 1203 (1973).
- E. T. John Lesinski & N.O. Stockmeyer, Jr., *Prehearing Research and Screening in the Michigan Court of Appeals: One Court's Method for Increasing Judicial Productivity*, 26 Vand. L. Rev. 1211 (1973).
- F. Frederick G. Hamley, *Sample Instructions to Law Clerks*, 26 Vand. L. Rev. 1241 (1973).

## II. ANNOTATED BIBLIOGRAPHY

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1. ABA App. Judges Conf., Jud. Administration Div., *Judicial Opinion Writing Manual* (West Publ. Co. 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/\\$file/judiwrit.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/$file/judiwrit.pdf)).

Written by a committee, this book is a concise reference to appellate opinion writing for new judges. It covers the most important steps in crafting an appellate opinion, including topics such as format, writing style, and citation forms. The book contains guidelines, numerous examples and comments, a list of citation forms, and a model opinion. The format is simple and accessible; examples are helpful and illustrative. This book could be used as a basic primer for new judges, but a more detailed reference book is probably more economical for long-term use. Like-

wise, its limited scope of appellate opinions would not be broad enough for most law school courses. **HT; JS new.**

2. Ruggero J. Aldisert, *Opinion Writing* (2d ed., AuthorHouse 2009).

*Opinion Writing* is a classic work by the Honorable Ruggero J. Aldisert, Senior United States Circuit Judge of the United States Court of Appeals for the Third Circuit, and one of the most respected scholars on judicial opinion writing. The first edition, written in 1990, was only available to federal judges and state appellate judges. Because of repeated requests for the book, Judge Aldisert has revised and published the second edition himself. Although the book was initially distributed exclusively to judges, this “how-to” book is of great value to judicial law clerks and students in judicial opinion writing courses.

The book is divided into four parts: Theoretical Concepts Underlying an Opinion; The Anatomy of an Opinion; Writing Style; and Opinion Writing Checklists. Each chapter begins with an overview followed by a detailed list of suggestions, guidelines, and tips that cover every stage of the opinion writing process. Coverage includes state and federal courts; trial and appellate levels; hearing officers; and administrative law judges. In sum, it is safe to say that this clear and concise work remains the most comprehensive, authoritative guide to judicial opinion writing available today. Not only is it an indispensable reference for chambers, considering its comprehensiveness, readability, and modest price, it is an excellent choice for law school courses on judicial opinion writing.<sup>18</sup> **HT, T, Ref; E, C, JS.**

3. Calvert G. Chipchase, *Federal District Court: Law Clerk Handbook* (ABA 2007).

As its name suggests, the *Handbook* is most useful to clerks working for federal district courts. The slim volume summarizes the United States judicial system, the primary duties and responsibilities of clerks, and ethical considerations. It also gives guidance on drafting bench memos and orders, the most common documents federal district court clerks produce. Excerpts covering

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18. See *infra* annotation 19 (describing the companion law review article).

the bench memos and orders written by clerks at the trial court level might be useful in a judicial opinion writing class. This book is a basic introduction to the specific work of federal judicial law clerks and was not intended to reach a broader audience. However, for its intended audience, it is useful, concise, and well-written. **HT, Context, Ethics; E, C.**

4. Rebecca A. Cochran, *Judicial Externships: The Clinic inside the Courthouse* (3d ed., LexisNexis 2005).

The author compiled a casebook for students covering the clerk's or extern's role and discussing how clerks fit into the daily functioning of chambers. She also describes the career path of a judge from qualifications, selection, and training, to judicial ethics and the judge's role as docket manager. A forty-five page chapter on judicial opinions concentrates on procedural as well as substantive issues covering decision-making, public perception, collaborative writing, the drafting process, effective and ineffective opinions, tone, humor, and drafting by committee. The book contains excerpts of articles and judicial opinions, which sometimes interfere with the text's structure and coherency. *Judicial Externships* could be used as a general overview of the judicial externship experience in an externship classroom component, but would need a supplement on writing opinions and bench memos for complete treatment. **HT, Context, Ethics; E.**

5. Mary L. Dunnewold et al., *Judicial Clerkships: A Practical Guide* (Carolina Academic Press 2010).

This new book, written for law students, addresses the position of judicial law clerk from the time a law student becomes interested in clerking until the time a clerk leaves the court to proceed with the rest of his or her legal career. In addition to covering opinion writing, the *Guide* has helpful reviews of legal research, writing, and citation pertinent to writing opinions complete with useful charts and a sample generic research plan. The book is a "how-to" guide for drafting all types of documents common to trial and appellate courts, including bench memos, orders, findings of fact and conclusions of law, jury instructions, statements of reasons for imposing sentence, appellate opinions, correspondence, and speeches. The documents' purposes and functions are explained. Checklists and samples are sprinkled throughout,

and every chapter ends with a selected bibliography. The chapter on appellate opinion drafting explains the different types of opinions and their structures, their purposes and audiences, the writing process, and ends with a checklist, reading list, and samples.

Not only does the *Guide* offer practical advice, it addresses the issues of ethics and professionalism. The *Guide* is one of the most comprehensive textbooks available and is suitable for courses aimed at externs and soon-to-be clerks. At least 36 percent of the book contains information relevant to a course focused on opinion writing. Its organization, checklists, charts, additional resource lists, and index also make it a handy reference for clerks in chambers. **HT, Ethics, Ref; E, C.**

6. Elizabeth Fajans et al., *Writing for Law Practice* ch. 10 (2d ed., Found. Press 2010).

The book is a comprehensive legal writing text for law students that includes a chapter on judicial opinions. The authors point out that although judges are neutral, one function of their opinions is to show readers that their decisions are correct. Thus, the authors conclude that opinions possess characteristics of persuasive writing. The chapter not only provides a useful summary of opinion structure and writing process, it contains theoretical underpinnings by focusing on the issues of judicial constraint, candor, and reasoning facing judges. It includes a sample opinion and discusses judicial persona and judicial voice—two common rhetorical characteristics of judicial opinions. It concludes with useful exercises. The text is appropriate for an advanced legal writing or drafting class containing a unit on opinion writing. The chapter might also be a useful resource for a seminar on judicial opinions. **HT, T; UL LW, JP.**

7. Fed. Jud. Ctr., *Judicial Writing Manual* (Sylvan A. Sobel ed., Fed. Jud. Ctr. 1991) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/\\$file/judiwrit.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judiwrit.pdf/$file/judiwrit.pdf)).

This Federal Judicial Center publication was written to help federal judges improve their opinion writing. Based on interviews with numerous judges and edited by a board composed of judges, law professors, and professional writers, it is a concise, forty-one page volume. The *Manual* guides writers through determining the scope of the opinion, preparing to write, organizing, and writ-

ing. Then it takes writers through the essentials of style and editing. In addition, it discusses writing dissents and concurrences, and collaborative writing. Whether used as a textbook or a reference, the *Judicial Writing Manual* is a good starting point for new judges, clerks, or law students in a judicial opinion writing course. **HT, Ref; E, C, UL LW, JS new.**

8. Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 23 (2d ed., Thomson/West 2006).

In his book, Bryan Garner not only addresses legal writing style in terms of mechanics, grammar, usage, and editing, but also covers preparing legal documents such as judicial opinions. The seventeen-page section on preparing judicial opinions considers purpose and audience and makes recommendations regarding writing style, the drafting process, and editing. It also includes a couple of samples written in the “pure” style. This *Manual* is a general reference for all legal writers and provides a basic introduction to the subject of opinion writing. While this is an excellent reference for all legal writers, the short section on writing judicial opinions does not go into sufficient depth for courses on judicial opinion writing. A text, or even an article, on opinion writing will likely cover the same material and more. **HT, Ref; UL LW.**

9. Joyce J. George, *Judicial Opinion Writing Handbook* (5th ed., William S. Hein & Co. 2007).

This 800-plus page *Handbook* is a very comprehensive text on judicial opinion writing. The book consists of eight chapters that address topics such as writing trial court and appellate court opinions, writing efficiently, writing style and word usage, researching and decision-making, criticizing judges, and communicating within the court. The *Handbook* also covers judicial ethics, and includes exercises and a bibliography. In turn, each chapter provides an exhaustive list of issues judges or their judicial clerks are likely to encounter. The *Handbook* is saturated with examples, charts, substantive hints, and helpful exercises.

Compared to previous editions, the fifth edition includes several new topics including recusal, disqualification, and remittal; style and footnotes; judicial activism and judicial criticism; and judicial plagiarism, civility, and judicial temperament. While

probably too detailed for the typical law school course, it makes an excellent reference for the professor, judge, or judicial law clerk. **HT, T, Ethics, Ref; excerpts for E, C, UL LW, JP, JS.**

10. Inst. of Jud. Administration N.Y.U., *Appellate Judicial Opinions* (Robert A. Leflar ed., West Publ. Co. 1974).

The Foreword, written by then Chief Justice Warren E. Burger, explains that starting in 1956, groups of state and federal appellate court judges gathered each summer at New York University to attend appellate judge seminars sponsored by the Institute of Judicial Administration. The judges decided that they needed a handbook on writing opinions, and Leflar<sup>19</sup> assembled this book. The Preface, by Leflar, indicates that he compiled the book with the assistance of an Advisory Committee.<sup>20</sup>

The book consists of excerpts of writings on jurisprudence and legal philosophy, things that the over 600 appellate judges who took part in the seminars thought were important. The purpose was to have, in one compact volume, items that would stimulate appellate judges to engage in further reading and study on the appellate judicial process.

The excerpts are of varying sizes; everything from a one-sentence quote to several pages. Some excerpts might be good to stimulate discussions among judges or seminar students, but this is definitely not a “nuts and bolts” book about how to write an opinion. **T; JP, JS.**

11. *Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges* (Sylvan A. Sobel ed., 2d ed., Fed. Jud. Ctr. 2007) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbkbk.pdf/\\$file/lawclhbkbk.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/lawclhbkbk.pdf/$file/lawclhbkbk.pdf)).

This is the latest iteration of the *Handbook*, which has been around in various forms since 1977. With all its additions and revisions, it is a thorough guide designed for federal judicial law clerks by the Federal Judicial Center. The *Handbook* contains an

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19. Robert A. Leflar was dean at New York University, a state supreme court justice, and a law professor.

20. The Advisory Committee consisted of Floyd R. Gibson (Eighth Circuit), Maurice Rosenberg (Columbia), Walter V. Schaefer (Illinois Supreme Court), Roger J. Traynor (California Supreme Court), and John Minor Wisdom (Fifth Circuit).

overview of the types of litigation found in the federal court system, the courts' governance and administration, the workings of chambers, and case management at both the trial and appellate levels. The law clerk's role within this system and expectations for the clerk are explained. One sixteen-page chapter is devoted to the general rules of legal writing for federal courts and gives tips on the documents federal law clerks write. While the two-and-one-half pages covering opinions is good, it does not go into the depth necessary for a judicial opinion writing course. This is an excellent publication put together by the experts, and its best use in law school would be in a course providing training for externs and future judicial law clerks in federal courts. The *Handbook* would need to be supplemented with materials on writing judicial opinions. **Context, Ref; E, C.**

12. Joseph L. Lemon, Jr., *Federal Appellate Court: Law Clerk Handbook* (ABA 2007).

This book is a short compilation of practical information for federal appellate court law clerks. It is the companion to an ABA-published volume for federal district court law clerks.<sup>21</sup> It provides tips on writing, researching, and "Bluebooking" in ten pages. The book can serve as an introduction to new clerks in federal appellate courts, but it must be supplemented with more detailed information. Likewise, it is too brief to serve as the text of a judicial opinion writing course. **HT, Context, Ref; E, C.**

13. Aliza Milner, *Judicial Clerkships: Legal Methods in Motion* (LexisNexis 2011).

Professor Milner has written a comprehensive text on judicial clerking at both the trial and appellate court levels. In ten chapters, she covers the history of clerkships, routine of chambers at both levels, foundational principles clerks at trial and appellate courts need to know, working with statutes, and the types of writing done at both courts. Most chapters include notes and questions, exercises, and suggestions for further reading. Chapter five, on drafting appellate opinions, introduces students to drafting them by reproducing an opinion by Judge Aldisert and asking

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21. *Supra* annotation 3 (describing the companion volume).

questions that guide them through the structure of the opinion. After that introduction, she explains the elements of an appellate opinion and includes an exercise and notes and questions. She then uses the device of FAQ to point out some specifics and finishes with some writing techniques to improve opinions. Chapter ten, on drafting at the trial level, covers orders, judgments, and findings of fact and conclusions of law. An explanation of the purpose and content of each document is followed by an example. Professor Milner's text should be quite helpful in a judicial opinion writing course designed to train externs and judicial law clerks for both trial and appellate courts. **HT, Context; E, C.**

14. William D. Popkin, *Evolution of the Judicial Opinion: Institutional and Individual Styles* (N.Y.U. Press 2007).

This book is a fascinating history of the judicial opinion in the United States from its origins in English tradition and the founding of the United States judicial system to the United States Supreme Court's and state courts' institutional judicial styles starting in the nineteenth century and moving on to current institutional and individual styles. The author posits that judges write their opinions to respond to two, sometimes conflicting, political goals that are "work[ing] themselves out through the legal culture."<sup>22</sup> These two political goals are to project authority to the public and to apply the law to decide specific cases and perhaps to guide change. In turn, "the judge's role in the legal culture is expressed through the two components of judicial style: (1) institutional style (the way judicial opinions are presented to the relevant audience); and (2) individual style (the way the individual judge explains the decision)."<sup>23</sup> This book discusses theories of judging from a historical perspective. It includes data in list, chart, and graph formats. The whole book or portions of it could be used to fulfill the course purposes of writing as a judge and learning about your audience. Excerpts could be used in a judicial opinion writing course. The entire book could serve as a text for a law school or judicial seminar. With either use, Popkin's

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22. William D. Popkin, *Evolution of the Judicial Opinion: Institutional and Individual Styles 2* (N.Y.U. Press 2007).

23. *Id.*



theories should spark good discussions. **T; excerpts for E, C, UL LW, JP, JS.**

15. Edward D. Re, *Appellate Opinion Writing* (Fed. Jud. Ctr. 1975) (available at [http://www.fjc.gov/public/pdf.nsf/lookup/appellop.pdf/\\$file/appellop.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/appellop.pdf/$file/appellop.pdf)).

This is a speech given by Judge Re at a seminar for federal appellate court judges. He talks about the importance of accuracy, brevity, and clarity in opinion writing. He also states the elements of an opinion, gives a five-question checklist, and shares six tips for opinion writing. The speech is highly readable, but its content is adequately covered in most publications. The speech's usefulness is limited due to its small intended audience: federal appellate judges. However, it could be useful as one of several readings for a law school or new judges' seminar or a general advanced legal writing course. **HT; UL LW, JS new.**

16. Jennifer Sheppard, *In Chambers: A Guide for Judicial Clerks and Externs* (Aspen Publishers forthcoming).

As its title indicates, this is a text for students who are either judicial externs or will be judicial law clerks upon graduation. It serves the purpose of training them well. In eleven chapters, Professor Sheppard addresses practical topics of interest to both trial and appellate level clerks, including court personnel and their functions, how to read a docket, the civil and criminal litigation processes, and ethical concerns. Drafting documents for both trial and appellate courts is covered. Types of documents include trial and appellate court opinions, bench memoranda, orders, and jury instructions. Chapters containing advice on research, citation, and standards of review for trial and appellate courts are included. Chapter seven on opinion drafting is a step-by-step guide, covering everything from receiving the assignment, to drafting an opinion, to the final editing of the opinion. The essentials of pre-drafting preparation and the drafting of each section in the opinion are carefully examined. The chapter ends with a checklist. This text could form the foundation of a judicial opinion writing course, but professors might want to add some articles or excerpts that add to the craft of opinion writing, look at writing from a judge's perspective, and further discuss the audiences for opinions. **HT, Context, Ethics; E, C.**

17. Louis J. Sirico, Jr., *Judging: A Book for Student Clerks* (LexisNexis 2002).

This book is an anthology of writings by judges and lawyers selected and compiled specifically for a classroom component of a student-externship program. It is designed to promote reflecting on what judges do and grappling with the issues judges face, such as how public opinion affects the decision-making process. Other issues include judges' roles in the criminal process, settlement, and alternative dispute resolution processes. Judges' relationships with each other, juries, and lawyers are also chapter topics. A theme woven throughout the collection of writings is ethical considerations of the judiciary. One short chapter contains excerpts regarding opinion writing. A significant asset of the text is its applicability to externs in all types of courts. Each chapter ends with helpful summary notes and questions. Using this anthology will sensitize externs to the many ethical concerns of judges. It makes a thoughtful supplement to a text, excerpts, or articles on the skill of writing judicial opinions, writing from a judge's perspective, and learning about the audiences for opinions. **T, Ethics; E, C.**

18. Lawrence M. Solan, *The Language of Judges* (U. Chi. Press 1993).

The author, a linguist and lawyer, presents an analysis of judicial opinions where linguistic analysis is used to interpret documents that are the subject of a dispute. The author's thesis is that linguistic analysis used in opinions to justify decisions is not done consistently and is often illogical because judges sometimes use linguistic analysis to avoid giving straightforward reasons for their decisions, lest they be criticized for wielding state power to act with partiality or for not following precedent. To illustrate his point, the author scrutinizes a range of opinions where linguistic analysis was used. This narrow topic is one theory of judging that would lead to interesting discussions in seminars for judges or law students. It provides examples of the importance of words in all legal writing and lends an interesting perspective on writing as a judge. However, it would not be the main feature of a judicial opinion writing course. **T; JP, JS.**

*Articles*

19. Ruggero J. Aldisert et al., *Opinion Writing and Opinion Readers*, 31 *Cardozo L. Rev.* 101 (2009).

This article is the precursor to the second edition of Judge Aldisert's *Opinion Writing* introduced in annotation 2. Essentially, the article is a condensed version of Judge Aldisert's classic book. The article focuses on appellate-level opinions, while the book includes opinions at all court levels. The article consists of four parts. Part I introduces the reader to the judicial opinion writing process. Specifically, it discusses when decisions merit written opinions and published opinions, and discusses the decision-making process. It also summarizes various types of judicial opinions. Part II discusses the relationship between the opinion and its intended audience(s). Part III focuses on structuring the opinion, the mechanics involved, and readers' typical criticisms. Part IV addresses style and editing. The conclusion emphasizes the need for greater clarity in opinions to enhance communication between opinion writers and readers. For courses focusing on writing appellate opinions, this is an excellent alternative to *Opinion Writing* and can be added to other articles and book chapters to provide materials for a more comprehensive course. This fundamental article would be helpful in training appellate externs, clerks, and new appellate judges and includes portions on judicial perspective and audience. **HT, T, Context; E, C, UL LW, JS new.**

20. Samuel A. Alito, Jr. et al., Panel Remarks, *The Second Conversation with Justice Samuel A. Alito, Jr.: Lawyering and the Craft of Judicial Opinion Writing*, 37 *Pepp. L. Rev.* 33 (2009).

The article is a transcript of a panel discussion with Justice Alito and Judge Michael W. McConnell of the Tenth Circuit as the judicial participants. The discussion is an interesting insider's peek into the collaborative decision-making process of the United States Supreme Court and appellate courts, including some discussion on judges' perspectives regarding their opinion writing. The panelists also discuss writing for the various audiences of their opinions. Based on the discussion, readers can glean some important items to consider when writing an opinion. This read-

ing is appropriate for training externs and clerks, but could also be used in upper-level seminars and judicial process courses. **T, Context; E, C, JP.**

21. Richard B. Cappalli, *Improving Appellate Opinions*, 83 *Judicature* 286 (May/June 2000).

Rather than writing opinions to persuade readers that the decision is correct, this author thinks that judges should concentrate on setting clear precedent. Cappalli's short essay stresses that the long-term ramifications of the precedent created by the opinion far exceed the decision in the particular dispute. The author identifies problems common to many judicial opinions: overly broad holdings, too many rationales or complete lack of them, unnecessary musings that confuse future interpretation of the rule, and failure to tailor the rule to avoid unintended consequences when applied in subsequent cases. The essay concludes by proposing guidelines intended to help opinion writers create clear precedent for the future. Judges, clerks, and law students could discuss and debate the author's viewpoints and whether his guidelines for writing opinions could or should be followed. Such a discussion would highlight the course purpose of writing for the opinion's audiences. **T; E, C, JP, JS.**

22. Charles G. Douglas, III, *How to Write a Concise Opinion*, 22 *Judges J.* 4 (Spring 1983).

This short article written for judges by an associate justice on the New Hampshire Supreme Court is appropriate for externs and clerks as well. The title identifies the article's goal. The author gives a short substantive review of the essential parts of every opinion, followed by concrete suggestions to make opinions more effective and concise. Included are four tips on readability, seven tips for cutting verbiage, and four writing tips to help the writer and the reader. This piece could be used as a "how-to" for training externs, clerks, and new judges. However, in view of the more comprehensive articles and texts on judicial opinion writing that include this information, this might not be a first choice. **HT; E, C, JS new.**

23. Elizabeth Ahlgren Francis, *The Elements of Ordered Opinion Writing*, 38 *Judges J.* 8 (Spring 1999).

The author, an English professor and veteran teacher at the National Judicial College, teaches her judicial audience to write opinions in “agent/action” style so that their decisions will be “clear, precise, concise, and complete.” She follows her own advice in her four-page article, resulting in an interesting and very readable piece. She defines the good opinion as having seven parts, each with its own rhetorical task. She provides practical advice for each rhetorical task involved in making and writing a decision. Externs and clerks would find her techniques immediately useful in drafting clear, readable opinions. Not only is this a “how-to” article for training externs and clerks, it explains how using the techniques will help judges in their decision making, resulting in opinions that are more useful for their audiences. **HT; E, C, UL LW, JS.**

24. Bryan A. Garner, *Clearing the Cobwebs from Judicial Opinions*, 38 *Ct. Rev.* 4 (Summer 2001).

Addressing judges, Garner proposes that they move all citations in their opinions to footnotes and not use substantive footnotes, pointing out six advantages that would result. The resulting advantages include shorter, more effective sentences and paragraphs; a focus on ideas and clear thinking; more thorough case analysis; and no distracting string citations. The article has examples throughout and at the end. Garner takes a position that, if adopted by judges, would make opinions more user-friendly for their audiences. His thought-provoking argument is fodder for seminars and judicial opinion writing classes. Its narrow focus might keep it off the reading list in a time-strapped writing course. **HT, T; JP, JS.**

25. Thomas Gibbs Gee, *A Few of Wisdom’s Idiosyncrasies and a Few of Ignorance’s: A Judicial Style Sheet*, 1 *Scribes J. Leg. Writing* 55 (1990).

Judge Gee shares a six-page style sheet checklist that he maintains and gives to his judicial law clerks to use in drafting memoranda and proposed opinions. The author emphasizes the importance of clarity and readability as well as the use of simple and direct language. The list is not exhaustive and reflects the

author's taste in style. It contains many of the same rules and guidelines that legal writing professors impress upon first-year students. The list could be a guide for training externs and clerks, but professors will likely prefer to make their own style sheets or have students construct one based on the preferences of the judge they are working for. **HT; E, C.**

26. Walker Gibson, *Literary Minds and Judicial Style*, 36 N.Y.U. L. Rev. 915 (1961).

The author, an English professor and faculty member of New York University Law School's Seminar for Appellate Judges, argues to judges that good judicial writing is similar to good writing in general because the same rules of organization, style, and composition apply to both. The author emphasizes the importance of recognizing the audience and its impact on choice of style, tone, and complexity. He effectively uses two opinions as examples of poor and good style and stresses the importance of honesty and humility in judicial opinions. This article, although dated, offers time-tested advice from a literary perspective and would suit the judicial opinion writing course purpose of training externs and clerks and writing for audiences for opinions. **HT; E, C, UL LW, JS.**

27. Chris Guthrie et al., *Inside the Judicial Mind*, 86 Cornell L. Rev. 777 (2001).

This article reports on the results of an empirical study of judicial susceptibility to systematic errors in judgment. The study tested the decision making process of 167 federal magistrate judges by exposing them to five common cognitive illusions (anchoring, framing, hindsight bias, the representativeness heuristic, and egocentric biases) and checking for the illusions' influence on their decisions. Psychologists have found that humans make complex decisions by relying on mental shortcuts (heuristics). These shortcuts produce errors in judgment under certain facts, hence cognitive illusions. Although the study showed that judges are less susceptible to the illusions of framing and the representativeness heuristic than lay people, the authors concluded that each of the five illusions had a significant impact on judicial decision making. The authors end by suggesting steps to curb the effect of cognitive illusions. This article, while not about opinion

writing, does venture into the minds of lay and judicial decision-makers. It could spark an interesting discussion in a law school or judicial seminar. **T; E, C, JP, JS.**

28. Jeffrey L. Harrison & Sarah E. Wilson, *Advocacy in Literature: Storytelling, Judicial Opinions, and The Rainmaker*, 26 U. Mem. L. Rev. 1285 (1996).

This essay is part of a collection that uses John Grisham's novel, *The Rainmaker*, as a vehicle to explore contemporary issues in law and society. The authors of this essay posit that judicial writers and novelists use similar techniques. As an example, the authors claim that the goal of both writers is to tell stories in ways that produce the desired result. Thus, they both advocate for a result in the way they portray the characters and choose words. Just as novelists develop characters and bring them to resolution, so judges use characterization to form the story of the case and word choice to support their decisions. This article brings aspects of writing from a judicial perspective and writing for the audience for opinions to a judicial opinion writing course. **HT, T; E, C, JS.**

29. Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 Scribes J. Leg. Writing 1 (2003–2004).

Professor Kimble reports the unsurprising results of an empirical study that asked lawyers to read two versions of the same opinion, the original and the revised original, and decide which one they preferred and the top two reasons why. Seven-hundred lawyers received the survey; 251 responded. Thirty-nine percent preferred the original opinion; 61 percent preferred the revised opinion. The author concluded from the reasons the lawyers gave for their choices that the most important key to a well-written opinion is to eliminate unnecessary detail and to begin with a summary. He goes on to give examples of the other things he did to revise the preferred opinion, thus creating a list of tips for writing excellent opinions. The original and revised examples given could be used to train externs and clerks. The survey package that Professor Kimble mailed is reproduced in an appendix so that a professor could have the class take the survey as a springboard into working on these writing techniques. **HT, T; E, C, UL LW, JS.**

30. Joseph Kimble, *First Things First: The Lost Art of Summarizing*, 38 Ct. Rev. 30 (Summer 2001).

Professor Kimble, the champion of plain language, advocates that judges make more extensive use of “deep issue” summaries/thesis statements at the beginning of judicial opinions. Professor Kimble appears to develop his thesis from the survey results published in the article listed in annotation 29, *supra*: A good summary at the beginning of an opinion is key to a well-written opinion. He argues that one of the most important elements of the summary is a statement of the deep issue, not the superficial issue, of the case. He advises that the issue should be stated in terms of the applicable rule, and further, that the summary should not only state the answer, but also a short statement of the reasoning behind it. He states that deep issue summaries improve the readability of the whole opinion. Examples abound. Combining this article with the one in annotation 29, *supra*, would provide examples and exercises to use in training externs and clerks, alone or in collaborative groups, in a judicial opinion writing class. **HT, T; E, C, UL LW, JS.**

31. Richard B. Klein, *Opinion Writing Assistance Involving Law Clerks: What I Tell Them*, 34 Judges J. 33 (Summer 1995).

This short article is a memorandum that Judge Klein of the Philadelphia Court of Common Pleas gives his new law clerks. He presents a basic set of recommendations and examples to his clerks regarding the structure and substance of opinions, efficient use of time, and writing style. Substantively, this contains more useful information for training externs and clerks than the style sheet checklist in annotation 25, *supra*. **HT; E, C.**

32. Gerald Lebovits & Lucero Ramirez Hidalgo, *Advice to Law Clerks: How to Draft Your First Judicial Opinion*, 36 Westchester B. J. 29 (Spring/Summer 2009).

This is a concise, yet thorough, summary of what law clerks need to know before writing their first judicial opinion. The authors, a New York City Civil Court Judge and a recent Columbia LL.M. graduate, instruct clerks in the steps necessary to understand the case and prepare to write, which is a topic not included in all articles. They give good background information about the purposes of judicial writing, as well as some useful substantive



tips for every stage of the opinion writing process. The text is simple, direct, and well-written. This would be a good addition for training externs and clerks in a judicial opinion writing course. **HT; E, C.**

33. Gerald Lebovits et al., *Ethical Judicial Opinion Writing*, 21 *Geo. J. Leg. Ethics* 237 (2008).

This article, aimed at judges, looks at issues of the style and substance of judicial opinion writing through the lens of judicial ethics. The authors posit that opinion writing helps shape the public's perception of the judiciary, and therefore, judges must follow the highest ethical standards in writing opinions. They proceed, in this lengthy article, to define ethical judicial opinions and suggest guidelines for drafting them. The authors discuss ethical issues in writing opinions in a formal (pure) style and in an informal (impure) style. They also discuss the ethical use of clerks in the opinion writing process. Examples of each consideration are included. Though the authors give practical advice for training externs and clerks, it is based on ethics and theory. The article discusses the judge's perspective and the audiences for opinions. It does a good job of impressing opinion writers with the responsibilities they carry. This article is a good choice for judicial opinion writing courses and seminars. **HT, T, Ethics; E, C, JP, JS.**

34. Robert A. Leflar, *Honest Judicial Opinions*, 74 *Nw. U. L. Rev.* 721 (1979).

In this article, Robert A. Leflar<sup>24</sup> advocates for intellectual honesty in judicial opinion writing. He does not accuse judges of dishonesty, but of sometimes failing to write opinions clearly and completely so that the reasons given for the decisions are somehow misleading to readers. He argues that judges should explain the real reasons, be they social, political, economic, or moral, for overturning existing precedent. He claims that giving honest reasons for decisions will promote respect for the law in general and the judiciary in particular. Moreover, he thinks that honest reasoning is likely to promote judicial efficiency. This article, which

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24. Robert A. Leflar is the editor of the book in annotation 10, *supra*.

considers judicial perspective and audiences for opinions, is perhaps most appropriate for advanced seminars and courses in judicial process. **T; JP, JS.**

35. Robert A. Leflar, *Quality in Judicial Opinions*, 3 Pace L. Rev. 579 (1983).

As part of a tribute to retired Judge James D. Hopkins of the New York Supreme Court's Appellate Division, the author uses Judge Hopkins's judicial opinions as examples of quality judicial writing. The author also shares a list of thirty-three items Judge Hopkins had compiled and distributed as "*Notes on Style in Judicial Opinions*" while a faculty member of Appellate Judges Seminars. These "*Notes*" offer professors another choice in style sheets. Among other qualities of well-written opinions, the author emphasizes the importance of respect and consideration for the intended readership; knowledge of both narrow, controlling rules and broader legal concepts; conciseness; honest, direct, and clear reasoning; plain English; and clear organization. The audience for the article is the judiciary and their clerks, and the article fulfills the purpose of judicial opinion writing courses to train externs and clerks. It also addresses the issue of the audience for opinions, making the article appropriate for judicial opinion writing courses. **HT, T; E, C, JS.**

36. Andrea McArdle, *The Socioeconomics of Justice: The Perspective from the Law School Classroom*, 9 Intl. Rev. of Constitutionalism 193 (2009).

While this essay is written for academics, and not for the audiences of a judicial opinion writing class, it is included because it explains the creation of a second-year lawyering seminar in judicial writing with the goal of exposing law students to the possibilities the role of judicial opinion writing has to affect social-justice. Specifically, Professor McArdle proposed and taught this course because of the increase in the number of students seeking judicial internships and clerkships with state and federal courts. She found that by using the vehicle of a judicial writing seminar, she could expose students to the effects of economic and social status on access to justice. Readers of this Bibliography may consult this article to discover the course structure. **HT, T; E, C.**

37. Abner J. Mikva, *For Whom Judges Write*, 61 S. Cal. L. Rev. 1357 (1988).

Judge for the District of Columbia Circuit Abner J. Mikva delivered this lecture at the University of Southern California Law Center in 1987. He denounces the fact that the length of federal court opinions has become “encyclopedic” and concludes that problems in legal education and the education of the bar and wider public have resulted. He blames the lengthening of opinions on the growth of the different audiences of judicial opinions, which was caused by the publishing of decisions. With the growth in number and type of audiences, judges began writing opinions to meet all their audiences’ and critics’ needs. Hence, the ever longer opinions. He concludes that judges must take responsibility and limit the length of their opinions. One remedy he proposes is to end the use of footnotes. This lecture is relevant to the goal of the judicial opinion writing course to write for judicial opinions’ audiences. **T; E, C, JS.**

38. Douglas K. Norman, *An Outline for Appellate Opinion Writing*, 39 Judges J. 26 (Summer 2000).

The author, a former chief staff attorney for the Texas Court of Appeals, provides a simple outline of a typical appellate level opinion. The short article makes useful suggestions for new judges and clerks on how to craft a readable, effective opinion. It contains especially helpful advice for organizing, discussing, and resolving points of error raised by appellants. This is a succinct “how-to” article for training externs and clerks in a judicial opinion writing course. **HT; E, C, JS new.**

39. Jennifer Sheppard, *The “Write” Way: A Judicial Clerk’s Guide to Writing for the Court*, 38 U. Balt. L. Rev. 73 (2008).

The author presents a comprehensive, yet concise handbook for new judicial law clerks at both the trial and appellate levels. Professor Sheppard has expanded this article into a text for judicial law clerks and externs, forthcoming from Aspen Publishers and discussed in annotation 16, *supra*. The article begins by discussing the clerk’s role at the court, followed by thorough guidance on how to craft the several documents clerks are usually assigned: bench memos, jury instructions, orders, and opinions. Illustrative of the guidance provided for each document is the sec-

tion devoted to drafting judicial opinions. There, the author covers such topics as reviewing the record, researching, outlining, structuring, drafting, writing techniques, style, tone, and editing. The article is replete with examples, substantive tips, and checklists. Exceptionally detailed, the author pays special attention to various procedural questions likely unfamiliar to new clerks. In sum, the article is an excellent guidebook for training externs and clerks that will be a helpful addition to judicial opinion writing courses. **HT, Context; E, C.**

40. Timothy P. Terrell, *Organizing Clear Opinions: Beyond Logic to Coherence and Character*, 38 *Judges J.* 4 (Spring 1999).

The author advocates clarity in judicial opinions. He claims that clear language is only a small part of a clear opinion; organization, coherence, style, and audience considerations are also essential for clarity. He focuses on coherent organization as important to attaining clarity and lists labeling, structure, and purpose as progressively narrowing the focus in the minds of both reader and writer to achieve coherence, so complex material is understood by the reader. The author gives examples of introductions in opinions that do this. He uses Judge Posner's attack on Judge Wald in the University of Chicago symposium on judicial opinion writing<sup>25</sup> as an example, showing that choice of writing style or "persona" affects the decision's substance. This theoretical, but practical, article is aimed at a judicial audience, but could be profitably used in a judicial opinion writing course to study writing for the audiences for opinions from a judge's perspective. **HT, T; E, C, JS.**

41. Nancy A. Wanderer, *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 *Me. L. Rev.* 47 (2002).

This article provides a concise guide to the proper form, content, and style for judicial opinions. It assumes that the reader has little or no prior knowledge about the opinion writing process; thus it addresses the topic in a step-by-step manner. The article introduces the guide by explaining the importance of reasoned

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25. See *infra* annotation 44(C).

judicial opinions in the American legal system and the importance of audience for appellate opinions. It lists no less than thirteen potential audiences for opinions. The author asserts that if opinion writers would keep the needs of their audiences in mind, the quality of opinions would improve. She relates four questions about audience and purpose that opinion writers should answer for themselves every time they write. Then she moves to the details of form, order, and style and gives examples along the way. The article touches on the use of humor and figurative language in opinions and then concludes with a useful checklist for critiquing opinions. Not only is this a good article for training externs and clerks, especially at the appellate level, it contains excellent coverage of writing opinions for their many audiences. The article will be useful in the judicial opinion writing course. **HT; E, C, UL LW, JS new.**

42. Charles R. Wilson, *How Opinions Are Developed in the United States Court of Appeals of the Eleventh Circuit*, 32 *Stetson L. Rev.* 247 (2003).

The article gives an interesting insider's view of the Eleventh Circuit's process and procedure from the time an appeal is filed to the release of the opinion. Although the process may be similar at other federal circuit courts, this article focuses specifically on the Eleventh Circuit, perhaps limiting its usefulness. The author is an Eleventh Circuit Court judge, who likely wrote this for future clerks, lawyers, and law students. The processes of screening cases and deciding to hold oral arguments are explained, as are the methods of deciding whether to publish an opinion and whether to issue a summary affirmance or memorandum opinion. Then the author describes the basic structure of opinions and gives examples from the court's own decisions. The importance of using roadmaps, topic sentences, and outlines to enhance clarity is stressed, and the example provided could be used in class to demonstrate these techniques. Writing style and audience is mentioned briefly. Excerpts on the decision to publish and whether to issue summary affirmances might be helpful in training externs and clerks in a judicial opinion writing course to give the students background in some of the decisions judges must make in addition to how to decide cases and write the opinions. **HT, Context; E, C.**

43. Michael J. Yelnosky, *If You Write It, (S)he Will Come: Judicial Opinions, Metaphors, Baseball, and "The Sex Stuff"*, 28 Conn. L. Rev. 813 (1996).

The author addresses the use of metaphors in judicial opinions. He argues that if carefully crafted, the use of metaphors in judicial opinions assists in understanding. He reasons that metaphors make opinions more persuasive and readable, make complex principles more understandable, can assist in analogical reasoning, and can be catalysts for new insight about concepts by linking those concepts to seemingly unrelated ideas. Baseball metaphors are used as an example. The article is narrow in scope; however, it may prompt an interesting discussion regarding training externs and clerks in a judicial opinion writing course. **T; E, C, UL LW, JS.**

#### Symposia

44. Symposium, *Judicial Opinion Writing*, 62 U. Chi. L. Rev. 1363 (1995).

- A. James Boyd White, *What's an Opinion for?* 62 U. Chi. L. Rev. 1363 (1995).

James Boyd White's essay introducing the symposium on judicial opinion writing characterizes its theme as addressing the question of "whether it matters how judicial opinions are written, and if so why."<sup>26</sup> He elucidates that question first by asking what life would be like under the law if no opinions were written and concludes that there might be a workable legal system without opinions, but that written opinions allow for the use of precedent.<sup>27</sup> He claims that the written opinion's most important role is not in allowing for prediction of results or which arguments to make for a client, but "the invocation of the authority of prior texts to shape and constrain what may be done in the present."<sup>28</sup>

Professor White suggests that it *does* matter how opinions are written because they have important consequences for the parties

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26. James Boyd White, *What's an Opinion for?* 62 U. Chi. L. Rev. 1363, 1363 (1995).

27. *Id.* at 1363–1366.

28. *Id.* at 1367.

in a particular case and for the future.<sup>29</sup> He further argues that a crucial part of legal activity is the criticism of opinions on rational, political, and moral grounds because that is how relevant arguments are made in support of changing or retaining current rules of law.<sup>30</sup> For him, the bigger question “is whether law will move in the direction of trivializing human experience, and itself, or in the direction of dignifying itself and that experience.”<sup>31</sup> He concludes by suggesting some questions that readers ask themselves while they are reading the symposium articles.

This relatively short theoretical piece, written for all students of the law, asks foundational questions about the purposes of written opinions that will provide context for the three goals of a judicial opinion writing course and assure the students that learning about writing judicial opinions matters. **T; E, C, UL LW, JP, JS.**

B. Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writing*, 62 U. Chi. L. Rev. 1371 (1995).

The author, a judge on the United States Court of Appeals for the District of Columbia Circuit, addresses the audiences for opinions and explains judges’ use of rhetoric in judicial opinions as a tool to stay within the constraints placed upon them by law, yet have some room to develop the law in certain ways. Judge Wald discusses the ways judges take liberties by using rhetorical devices in telling the facts; describing the standard of review; wording the rule of law, test, and holding; applying precedent; adding dicta; and choosing to write separate opinions. Judge Wald uses examples of opinions to demonstrate her claims. This article exposes its readers to writing from a judicial perspective. The article would be useful in both judicial opinion writing courses and seminars. Note that Judge Posner’s article in this symposium<sup>32</sup> takes issue with Judge Wald’s opinion writing style. She responds in another article in this symposium.<sup>33</sup> **T; E, C, UL LW, JP, JS.**

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29. *Id.* at 1367–1368.

30. *Id.* at 1368–1369.

31. *Id.* at 1369.

32. *Infra* annotation 44(C).

33. *Infra* annotation 44(D).

C. Richard A. Posner, *Judges' Writing Styles (and Do They Matter?)*, 62 U. Chi. L. Rev. 1421 (1995).

In his symposium article, Judge Posner first defines “style,” distinguishes it from rhetoric, and then explores the use of different styles in opinions. Judge Posner identifies two styles as polar opposites: “pure” and “impure.” He characterizes the “pure” writing style as impersonal, formal, ostensibly correct, and lofty, matching it to formalist jurisprudence. He characterizes the “impure” style as more direct, informal, dramatic, and frank, matching it to pragmatist jurisprudence. Then, Judge Posner distinguishes a judge’s style from jurisprudential stance. After analyzing opinions of Judge Wald and Justice Holmes, he concludes that style *can* affect the content of an opinion. Judge Posner is quite critical of Judge Wald’s opinion. This theoretical piece is most appropriate for seminars. **T; E, C, UL LW, JP, JS.**

D. Patricia M. Wald, *A Reply to Judge Posner*, 62 U. Chi. L. Rev. 1451 (1995).

In this short reply to Judge Posner’s sharp-tongued criticism of her “pure” writing style, Judge Wald confronts him for his vicious attack on her. Judge Wald’s confrontation seems warranted. The portion of Judge Posner’s article that viciously attacks Judge Wald and this reply invite their audience to witness what should be a personal exchange. This Reply would only be used if Judge Posner’s article<sup>34</sup> and Judge Wald’s earlier article<sup>35</sup> in this Symposium are used. **T; E, C, UL LW, JP, JS.**

E. Frederick Schauer, *Opinions as Rules*, 62 U. Chi. L. Rev. 1455 (1995).

The author contests the general criticism that opinions are not written in a more literary and aesthetic style. He claims that because one of the major functions of appellate courts is law development; opinions are properly written more like the rules found in statutes so that the public can better follow the law and lawyers can better predict how a court will rule. He asserts that when courts set out vague, multi-pronged tests, the opinion might

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34. *Supra* annotation 44(C).

35. *Supra* annotation 44(B).



be more literary or imaginative, but the tests, when applied, lead to less predictable results. This theoretical article considers the needs of the audiences for opinions, specifically the public and lawyers, and is most appropriate for discussion in a seminar, but could also be discussed in a judicial opinion writing class. **T; E, C, JP, JS.**

F. Martha C. Nussbaum, *Poets as Judges: Judicial Rhetoric and the Legal Imagination*, 62 U. Chi. L. Rev 1477 (1995).

Professor Nussbaum's article is based on a chapter in her book, *Poetic Justice: The Literary Imagination in Public Life*.<sup>36</sup> She uses poetry of Walt Whitman to explain "literary imagination" and equates it with judgment. She posits that the literary artist's imagining can add to and be a part of judicial reasoning and that the constraints of precedent put needed boundaries around a judge's use of literary imagination and results in judicial neutrality. She argues that literary imagination and sympathy are essential to be fully rational. This article does not seem to aid in attaining any of the three stated goals of a judicial opinion writing course.<sup>37</sup> It might provide discussion material for a seminar. **T; JP, JS.**

45. Symposium, *Judicial Clerkships: A Symposium on the Institution*, 26 Vand. L. Rev. 1123 (1973).

This approximately forty-year-old symposium, focuses on the institution of judicial clerkships and has as its audience law students who plan to be judicial law clerks and the judges who employ them. The purpose of the symposium is to help law students decide if they want to pursue clerkships after graduation and to help judges make the most effective use of them. Of historical note is the persistent use of male pronouns in reference to both judges and their clerks.

A. Paul R. Baier, *Law Clerks: Profile of an Institution*, 26 Vand. L. Rev. 1125 (1973).

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36. Martha Craven Nussbaum, *Poetic Justice: The Literary Imagination in Public Life* (Beacon Press 1995).

37. *Supra* intro.

This is the invocation given at the first annual Law Clerk Institute in 1972 sponsored by the Appellate Judges Conference of the Division of Judicial Administration of the American Bar Association and Louisiana State University Law School. This article is directed at law students or recent graduates who are about to embark upon a clerkship. It traces the historical development of the United States Supreme Court clerkship institution; discusses the traditional duties of law clerks in both trial and appellate courts, state and federal; and discusses clerks' importance in the administration of justice. Until this point, clerks learned their duties on the job; the goal of this Institute was to provide some guidance to clerks before their terms began. Excerpts from this article are useful to give some historical background of the clerkship institution in a judicial opinion writing course to law students who expect the course to train them to be externs or clerks. **T, Context; E, C.**

B. Eugene A. Wright, *Observations of an Appellate Judge: The Use of Law Clerks*, 26 Vand. L. Rev. 1179 (1973).

The author, a judge for the Ninth Circuit, addresses prospective judicial clerks regarding how they are useful to appellate judges. He states that their role is to assist judges in their most important function—decision-making—and to help the judges use their time efficiently. Clerks bring research, analytical, and writing skills to the table; judges bring their vast experience and understanding of trial and appellate procedure, standard of review, and how the law is applied. Clerks benefit by learning from the judge's experience, and judges benefit from the recently acquired knowledge in cutting-edge areas of the law. The author goes on to detail the usual functions of clerks in the appellate process, including what he sees as the six essential characteristics of clerks' legal writing. Apart from the advent of computer-assisted legal research, this article remains a useful description of the expectations appellate judges have for their clerks and some of the values of a clerkship experience to the new law graduate. It would make a useful addition to the training of externs and clerks in a judicial opinion writing course. **T, Context; E, C, JS new.**

C. Robert Braucher, *Choosing Law Clerks in Massachusetts*, 26 Vand. L. Rev. 1197 (1973).

This short article, written by an associate justice of the Supreme Judicial Court of Massachusetts, focuses on clerking at the state court level, particularly in Massachusetts. He explains the selection process at his court and the duties of that court's clerks. This article is so narrowly focused that it would not be very helpful in training externs and clerks in a judicial opinion writing course. **Context.**

D. George Rose Smith, *A Primer of Opinion Writing for Law Clerks*, 26 Vand. L. Rev. 1203 (1973).

This short article, written by a long-time jurist on the Arkansas Supreme Court on the occasion of four new judges being appointed to that Court, presents a general outline on opinion writing. It charges the new judges to write in the "Grand Style" of Karl Llewellyn and recommends the classic advice of Strunk and White. It then proceeds to address most stages of opinion writing from preparation to editing. The author dwells on the Arkansas Supreme Court's procedure for decision-making, which will not be applicable to every court. The article is of the training judges and clerks variety, but is outdated, narrowly focused, and perhaps too basic to be considered for judicial writing courses. Many newer, broader-focused, and more comprehensive resources exist on the topic of training. **HT, Context.**

E. T. John Lesinski & N.O. Stockmeyer, Jr., *Prehearing Research and Screening in the Michigan Court of Appeals: One Court's Method for Increasing Judicial Productivity*, 26 Vand. L. Rev. 1211 (1973).

This is an article that focuses on a state court of appeals, namely Michigan's. It is written by its chief judge and its research director. It touts as effective in handling the ever-increasing caseload the use of extra judicial law clerks in a central unit to research and screen appeals before the oral arguments. Their product is a "prehearing report" similar to the bench brief a judge's personal clerk would prepare. The article describes Michigan's process, compares it to similar processes in other states, and discusses the changing role of clerks. Again, the narrow focus of this article and its age would not make it useful in training externs and clerks in a judicial opinion writing course. **Context.**

F. Frederick G. Hamley, *Sample Instructions to Law Clerks*, 26 Vand. L. Rev. 1241 (1973).

As the title indicates, these are sample instructions from a judge to a law clerk without comment. Two samples are given, that of Judge Frederick G. Hamley, of the United States Court of Appeals for the Ninth Circuit, and that of Judge Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit. The sets of instructions are consecutively numbered lists of the duties of clerks to their judges. Each item gives explicit instructions on what the clerk is to do and how the clerk is to perform duties during the clerkship. Instructions cover everything from expectations for research and drafting documents, to relationships with the judge and court personnel, confidentiality, ethics, traveling duties, routine operation of chambers, and professionalism. These sets of instructions provide a peek into what clerking at the federal appellate level entails. As such, they will be useful and interesting to students training to be externs and clerks and will also provide some indication of judicial perspective in a judicial opinion writing course. **HT, Context, Ethics; E, C, JS new.**