

Pam DeMartino:

Welcome to the Widener Wordsmith, a podcast series designed to enhance and supplement legal methods here at Widener University Commonwealth Law School. I am Pam DeMartino, an adjunct professor of legal methods and the host of this series. Joining me throughout this year will be attorneys from both academia and legal practice who will provide listeners with advice and insight into the challenging process of legal writing.

Pam DeMartino:

A warm hello Widener Commonwealth Law students. I'm particularly excited about today's episode because it's a topic that's near and dear to my heart. I, like many of you, concentrated my undergraduate studies in writing. In fact, I was an English major, so I was immersed in writing assignments, but even those of you who studied in the sciences had to develop your writing style and competencies. For some of you, your decision to attend law school was actually driven by your confidence in your writing abilities.

Pam DeMartino:

So why in the heck is legal writing so complicated? To help us answer that question is Professor Amanda Sholtis. Welcome, Professor, and thank you for agreeing to join me today to talk about the legal writing process.

Amanda Sholtis:

Hi.

Pam DeMartino:

We are here to perhaps explore some of the ideas and skills and thought processes and recommendations as it relates to this field of writing that many of our students, especially our 1Ls I think, have come to discover is very different from the writing experiences that they've had in the past.

Amanda Sholtis:

Mm-hmm (affirmative). Yes.

Pam DeMartino:

Before we delve into the actual elements of legal writing though, I think perhaps we could give our listeners an idea of who you are here at the law school. Not all of the students have had the opportunity perhaps to meet you and they're not all assigned to your sections. So maybe you could just take a few minutes and share with us your journey in becoming a law professor, and my angle here with this question is as it perhaps relates to your interest and love of writing.

Amanda Sholtis:

Sure. Sure. So I have always wanted to be both a teacher and a lawyer. I remember wanting to be a teacher as far back as about nine years old. And then-

Pam DeMartino:

Did you play school?

Amanda Sholtis:

I played school with my cousins. And then in ninth grade, I read *To Kill a Mockingbird* as part of a school assignment. And ever since I read that book, I wanted to be a lawyer. So those two sort of things merged thankfully in this job.

Amanda Sholtis:

As far as sort of how I became a law professor, after law school, I clerked for Justice Newman on the Pennsylvania Supreme Court. And so I wrote drafts of judicial opinions. And then after that, I worked at the Attorney General's Office in the civil litigation division, where I represented the Commonwealth agencies and employees whenever they were sued for civil rights violations or employment discrimination actions. And so I drafted briefs and I-

Pam DeMartino:

Pleadings.

Amanda Sholtis:

Pleadings. I also argued before several courts, Commonwealth Court, Pennsylvania Supreme Court.

Amanda Sholtis:

So fortunately I teach now in areas that I have experience. I've written judicial opinions, I've written briefs, I've delivered oral arguments. So I really feel fortunate to have the experience in what I teach.

Pam DeMartino:

In what you teach. That's wonderful. You also have a dual role here though at the law school. In addition to being the professor in the legal methods, you also are the director of academic success. And I just thought we could take a few minutes in the course of this podcast to share with the listeners what that program is all about and what your role is there.

Amanda Sholtis:

Sure. So my role as the director of academic success is to help students, in whatever ways they need, develop the academic skills they need to be successful, not only in law school, but also eventually in law practice. Because as lawyers, we're always teaching ourselves the law because the law is always changing.

Pam DeMartino:

That's true.

Amanda Sholtis:

So in whatever capacity students may need that, I'm available for one-on-one consultations. I also teach academic success courses. I manage the academic success fellows who are available for tutoring in certain subject areas. I help with workshops. I teach as part of intro to legal process, which has an academic success component.

Amanda Sholtis:

So a lot of things, but it basically is just to help students, wherever they are, get the help they need, whether it be how to take an exam, how to study for exams, how to prepare best for class. Whatever they need, I'm there to help them with that.

Pam DeMartino:

And that's not limited to just first years?

Amanda Sholtis:

No, absolutely not. It's all three or four years.

Pam DeMartino:

Four years.

Amanda Sholtis:

Mm-hmm (affirmative). Yes.

Pam DeMartino:

As they need it. Now, and I don't know how you do all this, in addition to those roles, you're also a legal writer in your own right.

Amanda Sholtis:

Yes.

Pam DeMartino:

I am very aware of some of your publications, but I'm sure our listeners are not. So perhaps you could share with us your writing experience.

Amanda Sholtis:

Sure. So part of being a law professor is not only the teaching aspect and the service aspect, which we've sort of talked about, but also the scholarship aspect. And that's where the writing comes in.

Amanda Sholtis:

So I've written several smaller pieces as well as major law review articles. And I just had one come out this month I'm very excited about, in Stetson Law Review about live critique, which is the process that we use to evaluate some of the students' writing by reading it out loud and giving feedback live to the students. So I wrote an article on that process so that if law professors want to incorporate it into their courses, they know how to do it.

Pam DeMartino:

Students who come back next semester, we can access that?

Amanda Sholtis:

Yes. Mm-hmm (affirmative). Yes.

Pam DeMartino:

[crosstalk] take a look and read. And in addition to that, I also know you're a very avid blogger.

Amanda Sholtis:

I have blogged. I took a step away from the blogging as of late because it just got to be too much, but I was blogging as part of the Appellate Advocacy Blog. And I really enjoyed it. It was very fun. And really, the only reason I stopped is I ran out of ideas. It's hard to come up with new ideas to blog about every week. It's really hard.

Pam DeMartino:

[crosstalk] you. Yes, it's one of those media events that seem to look so easy and natural, but it takes some thought and planning and work.

Amanda Sholtis:

It's hard.

Pam DeMartino:

Yes, it is. So these endeavors really reflect a keen interest on your part though in the legal writing process and your commitment to helping students be successful. Can you credit that to any sort of one pivotal event or it's just something that has evolved during your time here at Commonwealth Law?

Amanda Sholtis:

I think as a lawyer, I was immersed in the writing process, as most lawyers are. And then when I transitioned to becoming a teacher, I think I hit that moment of you have to figure out how to teach what you've been doing, but you may not necessarily even know how to articulate that. So I think that my understanding and my interest in legal writing really has come from teaching legal writing and trying to figure out how to best explain to students how to do that and to equip them to do it well.

Pam DeMartino:

And I know from my experience in education, it's not a right or wrong, it's not an A or B. The effort in writing instruction is something that has to be somewhat unique and personalized sometimes to your class or to individual students, and that only can come from experience.

Amanda Sholtis:

Absolutely. And I work very hard to make the course personalized because different students have different needs. They come in with different skill levels, different abilities. And so what may be helpful to one student may not be helpful to another. And so, yes, the instruction has to be personalized to each student. I like to meet each student where he or she is.

Pam DeMartino:

And I'm going to date myself here a bit by pointing out that what excites me about these type of programs that law schools now offer is that back in the day, they did not exist.

Amanda Sholtis:

No.

Pam DeMartino:

I don't know if that was your experience as well, but the traditional law school environment was one that it was structured. It was very linear. You just progressed through and you were expected to just complete and keep up and perform. And you either succeeded or you did not. And the opportunity to just get some support that would... No one's giving you the answers, no one's giving you an easy way out, but just offering some additional advice and support that'll allow you maybe to overcome some early hurdles so you could be successful, that's something that really didn't make its way into the schools until after I had long exited,

Amanda Sholtis:

Yeah, agreed,

Pam DeMartino:

Well, let us move then into this area of legal or of writing that is somewhat tailored and unique to the legal curriculum. What do you believe makes legal writing such a distinct form of writing that seems to be challenging to students?

Amanda Sholtis:

I think the fact that legal writing seems like it's distinct and different is actually a misnomer. I think that legal writing at its basis is just good writing.

Pam DeMartino:

Oh, all right.

Amanda Sholtis:

But I think when we talk about legal writing, maybe what makes it so challenging is that there are so many different types of legal writings. So you could be writing a will. You could be writing a contract, a pleading, a brief, a law course exam answer. There are a lot of different forms and formats, as well as so many different subject matters. I think that's what makes it challenging, is the subject matter and the different forms and formats, but at its heart, legal writing is writing, and what makes it good is what makes writing good.

Pam DeMartino:

All right. Well then, let's take off from that point. What makes writing good? What do you think are the hallmarks of good writing?

Amanda Sholtis:

I think the major hallmark of good writing is keeping the reader in mind. So everything that you do as a writer, you should be doing so that your reader can understand what you're trying to communicate. So having good organization, transitions, clear, plain language, good grammar, everything should really be keeping that reader in mind so that the reader can understand what you're trying to communicate and it's pleasurable for the reader to read the document.

Pam DeMartino:

And I so agree with that point because I think what happens too often in our earlier academic studies is our reader, otherwise known as the audience, otherwise known as the grader, is our focus. And so we're writing to the person who's just going to grade. We're just thinking so limited in terms of who's reading this and who needs to have it, but now, in legal instruction, we're helping our students come to appreciate that you're going to have a real live audience who's going to be relying on what you're saying, and what you say is going to really matter. It could potentially have legal implications and they need to be appreciative of that. It's beyond just the assignment. It's beyond just the course that they're taking.

Amanda Sholtis:

Absolutely. And I often will tell my students to think about choices that they make and what their reader thinks of those choices. So for example, if you're writing a brief to a court and the court requires a certain type of font, if you don't use that font, what are you communicating to the reader? You're communicating either that you didn't know, and so that's not good.

Pam DeMartino:

Strike one.

Amanda Sholtis:

Exactly. You didn't know that was the rule, or you knew and you didn't care. So I'm just disregarding your preference in font and your direction in font, sort of thumbing your nose at the court. So I really ask them to think about the choices that they make from the reader's perspective and what messages are they communicating when they do that.

Pam DeMartino:

And part of that process then is the forming of the ideas and the organization of those ideas, and then actually transmitting those ideas to print in front of us, but legal methods, particularly through the first half of the year, really emphasize the need for self-evaluation. Can you recommend some ideas to our students in that regard and what they might be able to do to improve on their ability to evaluate themselves?

Amanda Sholtis:

Sure. So part of evaluating your writing is to make it look different than it seems on the page to you. As the writer, our mind will fill in what may not be there because we're so close to the material. So you want to try to trick your mind into seeing the material differently, and there are different ways to do that. If you are composing on the computer, you can print out a copy. You can change the font style or the size of the font, or even the color of the font. I've even read research that says if you move locations, so if you drafted the document in one room, move to a different room to edit it, read it out loud-

Pam DeMartino:

Oh, interesting.

Amanda Sholtis:

Read different sections in different order to try to trick your mind into seeing it, and giving yourself a cool off period where you put the material down for a period of time and then go back to it so that it looks fresher to you as you're editing.

Pam DeMartino:

And I'm hoping that through the JO process, our first Ls came to realize that much of the scheduling that we had put in place was designed to kind of compel them to work on the assignment in segments, allowing them that opportunity to finish it, put it down, go back and look at it again and again.

Amanda Sholtis:

Right. Because the writing process is really not a one and done process. And I think that's what a lot of students struggle with initially, is they're used to writing undergraduate papers or even graduate papers, writing it maybe the week or a few days before knocking it out, turning it in and getting a good grade. And that just doesn't work with legal writing. It's really a circular process where you start writing, you flush out the ideas, you go back, you realize either there's a hole there, or you have more research, or there's another issue you didn't realize, or there's a sub issue you have to develop.

Amanda Sholtis:

And so you really are running around in this writing process circle over and over and over again. And I think sometimes that frustrates students, but that's really just the nature of the writing process.

Pam DeMartino:

Yes. It's not indicative of their inability-

Amanda Sholtis:

No.

Pam DeMartino:

To complete it successfully. It's actually quite natural.

Amanda Sholtis:

Absolutely.

Pam DeMartino:

And what you're describing I think is related to the way that you once described to me your view of the writing process, and that being that it's a type of problem solving.

Amanda Sholtis:

It is, absolutely, where, especially with legal writing, the legal writer has given some sort of a problem to solve. And so they draft whatever they're drafting in response to that problem, whether it be a will or a complaint or a brief or an e-memo. Whatever they're drafting, it's based on some client problem, some issue, something that has to be accomplished. And so it starts with just identifying what's the problem, gathering the research, applying the research to solve the problem, and then communicating that in writing.

Pam DeMartino:

And that sometimes, or maybe probably more than sometimes, that resolution is accomplished through the writing as opposed to in your head, as opposed to I'm going to sit and think about this and I'll come up with the answer.

Amanda Sholtis:

Absolutely, writing is thinking. And I tell my students that, that you can't work it all out in your head, that you need to get it down on paper. Getting it down on paper is helping you think about it, process it, realize maybe where there is something missing or where you could go deeper in the analysis. And so you're never going to write one draft, and if you do, it's not going to be a good one.

Pam DeMartino:

I agree. I will agree with that remark and not because of my role here as an adjunct professor, but from my experience as well as a practicing attorney, that my best pieces were the ones that I really did devote the time and attention and opportunity to review and edit and revise.

Amanda Sholtis:

Absolutely. That article I just published, I mean, I would have to go back to my computer and see how many drafts I went through, but my final product does not look like what my first draft was. And I probably easily did 25 drafts of that article before I sent it out. And then once it was accepted with the Law Review, it went through more revisions with the Law Review staff. So it has gone through a lot of work and easily 25 revisions.

Pam DeMartino:

And so because of that, I think the writing process can be very humbling, a very humbling experience to students, and can cause us to sometimes feel belittled or insecure about our abilities. What type of recommendations do you have to help us recognize or overcome those feelings of inadequacies?

Amanda Sholtis:

Well, I think first just recognizing that the writing process is hard. It takes work, and it is also isolating because you do it by yourself. But then as far as the being humble, when you get feedback, I think rather than looking at the feedback as, "Oh, I'm not good enough," or, "I really messed this up," looking at it as, "Oh, that person giving me feedback really cares about my product, cares about me as a future attorney and they just want me to get better. So look, here's a way that I can make my writing better. I can be a better lawyer." I think welcoming that feedback and knowing that everyone makes mistakes and mistakes are the best way that we can learn.

Pam DeMartino:

So in what ways do the writing techniques that we develop in legal methods extend into the doctrinal courses for the students? And perhaps I should give that some context. I know that our course can sometimes seem somewhat isolated because it's not tied directly to any one topic or subject, but I've often spoken with students in trying to point out that we're really working on, as we started the podcast, good legal writing, which would apply across all course content.

Amanda Sholtis:

Absolutely. And how you would draft up a legal analysis, an analysis of legal issue, it does not vary depending on whether you're in legal methods or you're in torts or contracts or property. The professors may call it different things, they may call it IRAC, they may call it CRAC or something else, but it's all the same. It's all starting by identifying the issue, describing the applicable rule, then applying the rule to the facts, developing a counter analysis if there is one, and then concluding.

Amanda Sholtis:

So it's all the same structure, and all of the things that we talk about in legal methods as far as how to do a sound legal analysis, it applies to your exams. I would say the only exception is that you don't typically do the analogical reasoning that we talk about as far as the case comparisons. That usually doesn't happen on exams because you're not expected to know cases and talk about cases. Sometimes some professors do want that. There are certain key cases that they want the students to know and be able to talk about, but that's really dependent on the professor and the course.

Pam DeMartino:

Well, and we also know that not only has the law school curriculum evolved over the course of the last few decades, but so has the bar exam itself. And there is a component on the bar exam. They will be required to demonstrate their ability to organize their writing and think analogically.

Amanda Sholtis:

Absolutely. So in Pennsylvania, it's the performance test. Various other jurisdictions also have a performance tests component. And you are given a library, you are given a case, file and you are told to draft a document. And you may be told to draft a complaint, a memo, a brief. I know there have been times when people have had to draft opening statements, all kinds of things, but yes, you are given the materials and you're told to draft a legal document.

Pam DeMartino:

So that's such a great point because I don't think our students then realize we're actually getting them ready for the bar exam from day one.

Amanda Sholtis:

We absolutely are. From day one, from P'go.

Pam DeMartino:

From P'go.

Amanda Sholtis:

Right. Right.

Pam DeMartino:

It all started with P'go. Well, Professor, is there any overall advice that you could offer our 1Ls else as we work our way into the second half of our first year?

Amanda Sholtis:

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I would just say that really they have a lot of the skills and knowledge that they need for legal methods II already. And what we're going to focus on and legal methods II is going to be now doing the writing persuasively. And I just find that students really enjoy that. So I would say just have fun with legal methods II. Enjoy learning, persuasion, enjoy making arguments, enjoy representing your client and advocating on his or her behalf.

Pam DeMartino:

That's wonderful. Well, special thanks to all of my listeners. I hope our talk today has reassured you that all the legal writing process, it can be challenging, but you are being trained well to develop the skillset unique to the practice of law. And I will thank Professor Sholtis for coming in this morning.

Amanda Sholtis:

Thank you.

Pam DeMartino:

It has been wonderful talking with you and I look forward to all of you joining me again for the next episode of the Widener Wordsmith podcast series.

Pam DeMartino:

This podcast series was made possible by a generous grant award from the Association of Legal Writing Directors and the collaborative and creative support of the Legal Methods Faculty at Widener University Commonwealth Law School.

Outro:

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