

Seeking the Highest Level of Writing Competence

There are two—and only two—major skills you need as a lawyer: people skills and writing skills. If you have them, you're pretty well assured of success in the legal profession. Although some who excel in people skills don't write well, it's all but impossible to write well if you don't understand people. They're your readers, after all, and you must think about them constantly when you write. Understanding readers is, in legal terms, a condition precedent to good writing.

If you doubt that, consider for a moment the two or three most irritating e-mail messages (apart from spam) you've received lately. Now think about the writers of those messages. They have irritating personalities, don't they? That's because irksome people write irksome e-mail messages and letters. They probably don't understand themselves very well—much less their readers.

No one wants to be that type of person or that type of writer. But that's where anyone might end up who doesn't toil at honing these all-important skills. Let's focus on how you can sharpen them.

The American psychologist Abraham Maslow developed a four-stage analysis of how people master a skill:

- First comes “unconscious incompetence”: you have no idea how little you know, and what you don't know doesn't faze you.
- Second comes “conscious incompetence”: you've learned enough to sense how little you really know, and this incompetence has begun to bother you.
- Third comes “conscious competence”: you've learned a good deal and you're getting the hang of it, but you have to concentrate to get it right.
- Then, finally, comes “unconscious competence”: your skill has become a matter of habit, and you do it well without thinking about technique.

Maslow's categories apply quite well to legal writers. Consider what each type is like.

Unconsciously incompetent (UI) writers. These are the people who think they know the rules but never bother checking up on their “knowledge.” They're fond of saying things like this: “You shouldn't split a verb phrase with an adverb.” “You can't have a one-sentence paragraph.” “It's bad grammar to begin a sentence with *but*.” “I'm concerned with substance, not with style.” They like phrases such as *above-referenced cause, as per, enclosed please find, and pursuant to*. They think they learned how to write well in high school, and many of them have grown fond of legalese. These writers are clueless about their own cluelessness. They're not stupid—they're just self-deluded.

Consciously incompetent (CI) writers. As you might suspect, relatively few legal writers are in this category because they either repress their awareness (reverting to unconscious incompetence) or work to remedy

their deficiencies (progressing to conscious competence). Writers in this category may say things like this: “I don't know grammar very well.” “I'm not nearly as good a writer as my colleagues.” But not many lawyers own up in these ways. Also, this is a maddening phase because you feel uncertain about how to improve.

Consciously competent (CC) writers. These are the ones who trouble themselves to find out what respected authorities say about writing. They don't leave readily answerable questions unanswered. They'll be heard saying things like this: “Although the *AP Stylebook* rejects the consistent use of the serial comma, I looked and found that all the other punctuation authorities, including *The Chicago Manual of Style*, favor its uniform use.” “According to Bernstein, careful writers don't use *fortuitous* as a synonym for *fortunate*.” “What's your authority for stigmatizing split infinitives?” These writers have intellectual curiosity, and they know where to find reliable answers. The *Chicago Manual of Style* is always on their desk, and Theodore Bernstein is a household name.

Unconsciously competent (UC) writers. These writers have passed through the stage of conscious competence. They have integrated their years of learning so thoroughly into their writing that their accumulated knowledge is like muscle memory. They would never think of writing *Enclosed please find*. In fact, they'd be embarrassed if someone suggested it. If they're litigators, they've learned to torpedo obvious counterarguments *before* their adversaries have a chance to write about them. If they're transactional lawyers,

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they've long since learned to avoid the phrase *provided that* because it typifies poor drafting and causes needless ambiguities (and therefore needless litigation).

While thinking through this column, I sat on an airplane next to Evan Tager, an appellate lawyer who's a partner at Mayer, Brown & Platt in Washington, D.C. By any measure, he's a successful legal writer. After telling him about Maslow's categories, I asked him how he'd assess the bar as a whole. His answers:

UI: 65%
CI: 20%
CC: 14.8%
UC: 0.2%

The next day, I taught a seminar in Washington at Swidler & Berlin. I asked the lawyers—a mix of partners and associates—how they'd assess the bar as a whole. Their cumulative answers:

UI: 56%
CI: 22%
CC: 15%
UC: 7%

The day after that, in a Boston seminar, the lawyers at Ropes & Gray—again partners and associates—gave virtually identical answers.

That's enough surveying to satisfy me (as if I weren't already convinced) that something is seriously amiss in our *literary* profession. Remediating the problem will require monumental efforts by thousands of people. Then again, maybe most would be happier simply to repress the thought.

The keys to moving toward competence are fourfold: (1) do lots of writing regularly over many, many years; (2) teach yourself everything you can by closely analyzing how good writers do what they do; (3) learn as much as you can by reading good books about writing techniques; and (4) be as self-critical as you can stand being (but no more).

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