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## What Legal Writers Can Learn from Paint Nite

By Beth D. Cohen and Pat Newcombe

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Paint Nite activities and adult coloring have captured the nation's interest and gone mainstream.<sup>1</sup> These creative enterprises may resonate with us because of an increasing desire for human connection and expression in today's highly technologically tethered world.<sup>2</sup> These "quick to gain traction" phenomena tap deeply into our need for screen-free stress reduction activities that have gained in popularity.<sup>3</sup> Creating something on our own is what drives similar trends like the popular Do It Yourself movement and the resurgence of knitting after 9/11.<sup>4</sup> At the same time, these fun, creative activities can provide us with a window into the process of legal writing. Using Paint Nite as a reference point throughout a legal writing

course allows faculty to present a holistic view of the writing process and provides a useful analogy for faculty as well as an accessible context for students.

The participants in Paint Nite are amateurs, as are novice legal writers in our classes. Although skill and confidence levels of participants vary, the creation of a painting is a relatively new task for most participants. During a Paint Nite, the painting instructor guides students through the process of painting the picture selected for the class. First, the instructor may provide an overview of the piece as a whole, and then provides an overview of the approach, i.e., what colors will be laid down first, what the general painting process will be, and how to keep perspective on the project throughout the evening. The instructor also explains some techniques such as how to blend certain colors to make the shades necessary for the painting. Everyone at Paint Nite starts with a blank canvas and begins by following instructions to start with the underlying background. Even though the instructor explains how to combine paints to make the needed colors, participants blend the combination of colors using different amounts of paint and varied brush strokes so that the underlying tone of each painting is different from all others. Once the underlying paint has been applied, the painter adds multiple layers of paint, some in broad strokes and, later, some in more detailed, finer strokes. It is these finer, more detailed strokes that make a painting stand out as more "finished" and more "professional." At the end of the evening, no two paintings are alike, despite the fact that everyone had the same tools and the same instructions.

Similarly, although it is common for students in a first-year Legal Research and Writing class to wonder whether their memos will look the same because they are working with the same facts and

“[T]hese fun, creative activities can provide us with a window into the process of legal writing.”

<sup>1</sup> Paint Nite activities are gatherings at local restaurants and bars where a local artist guides participants in a step-by-step process to replicate a featured painting. "Paint Nite Inspires people around the world to live and connect creatively while providing artists and entrepreneurs the opportunity to make a living doing what they love." <https://customerservice.paintnite.com/hc/en-us/articles/203047574-What-Is-Paint-Nite->

<sup>2</sup> Brooke Lea Foster, *Painting Parties Mix Creativity and Cocktails*, N.Y. TIMES (May 29, 2015), <http://www.nytimes.com/2015/05/31/nyregion/painting-parties-mix-creativity-and-cocktails.html>

<sup>3</sup> Emily Carrigan, *Relive Your Childhood, Relieve Stress with Art Geared for Adults*, DAILY PRESS (Aug. 1, 2015), <http://www.dailypress.com/entertainment/arts/dp-fea-art-for-adults-0802-20150801-story.html>

<sup>4</sup> Julie Beck, *The Zen of Adult Coloring Books*, ATLANTIC MONTHLY (November 4, 2015), <http://www.theatlantic.com/health/archive/2015/11/sorry-benedict-cumberbatch-your-head-is-fine/414010/>.

“[W]hile everyone in class has the same tools to write a legal document—the same instructions, the same sample documents to reference, the same access to primary and secondary authority, and the same goals—there will be many differences in the finished work product because each student approaches the work from their own unique perspective.”

the same applicable/relevant law, no two memos are ever the same. Therefore, Paint Nite provides a useful metaphor throughout the course. For example, we have referenced Paint Nite to explain that the final work product produced by each student will differ from those of their peers.<sup>5</sup> Additionally, we have found it helpful to explain that while everyone in class has the same tools to write a legal document—the same instructions, the same sample documents to reference, the same access to primary and secondary authority, and the same goals—there will be many differences in the finished work product because each student approaches the work from their own unique perspective. Similarly, everyone at Paint Nite starts with the same tools—the same canvas, paints, brushes, and instructions. Participants in Paint Nite use the teacher’s completed painting as a model and guide, yet each finished product is uniquely original. There may be commonalities among the participants’ paintings, but each person’s technique and perspective is unique. Each painting is different and each person completes the finished product with varying degrees of success.

Like the steps involved in painting the picture, the memo writing process also involves multiple steps and layers. As legal memos have a specific format and structure to follow, all students will have an Issue, Brief Answer, Facts, Discussion, and Conclusion, making the broad, overall structure similar. However, each student may break down their discussion section with distinct headings that organize the content to help the reader better digest the analysis. Each student’s content also will be different. Some students will rely on particular primary authority they have selected as the most cogent to their analysis of the legal issue; others will select different authority. Each student creates a unique analysis using relevant authorities, like each Paint Nite participant creates a distinct background and foreground using different layers and shades of the available colors. Additionally, one student may resolve a legal issue in a clear and

unambiguous way and easily dispense with it, while another student may choose to devote a lengthy discussion to the same issue. Also, techniques such as using roadmaps in a memo’s discussion section are not always used successfully. This is a new way to write for law students and like those of us pushing past our comfort zones when we participate in Paint Nite, the structure of legal writing may feel totally unnatural to our students. It is, after all, like learning a new language. The polishing of legal writing is the last phase of writing and the final detail to make the memo professional. Typographical errors, poor grammar, style, and citation all impact the way that a writer’s work is received. Stepping back from one’s written work, just as the painter steps back from her painting for perspective, allows a writer to see details in the big picture that she may have missed.

Using Paint Nite as a reference point throughout the year can provide a helpful anchor. Just as there are many exercises that remind students that they are building on skills they have developed throughout their lives, the Paint Nite reference can remind them of what it is like when they are learning something new. Below are some of the connections that we have found to be most helpful.

#### Remember the Importance of Process Over Product

A legal writing course focuses on teaching about the importance of both the product created through writing and the process of creating it. Product is tangible; for example, sample office memos can be used in class to discuss and diagnose both effective and ineffective legal writing. However, it is during the writing process where the most significant learning occurs. Instructors teach that writing happens in phases: (1) researching authorities and analyzing results; (2) organizing these raw materials into an outline; (3) producing a first draft; (4) rewriting the draft several times; and (5) polishing and finalizing.<sup>6</sup> This is not necessarily a linear process and not one that is easy to examine when actually immersed in it. Every legal writer develops the process that

<sup>5</sup> Every student has heard about Paint Nite, and many have participated in these events.

<sup>6</sup> RICHARD K. NEUMANN, JR. & SHEILA SIMON, *LEGAL WRITING* 85 (2d ed. 2011).

works best for him through experimentation and practice. It benefits every writer to reflect on his own process, as this reflection is the most effective way of improving one's legal writing approach.

For the amateur painter, the hardest part is often putting the first brush stroke on the canvas. Similarly, new legal writers may suffer from writer's block and find it difficult to begin a memo. A blank sheet of paper or an empty canvas can be daunting. It is important to realize one does not necessarily have to start at the beginning, or at the same place. A student or a painter may choose to begin where she is most comfortable—on the corner of the canvas or the facts section of the memo. In the process of writing the facts, the writer may begin to discern what the most significant facts are and how the law will apply. It's not important where the writer begins, just that the writer does begin! The writer should resist a temptation to continually research in order to avoid the actual synthesis required in writing.

Writers do not know exactly what their conclusion may be in their memo when they start out, but the process of analyzing and applying the law, not perfectionism, is the goal. Striving for certainty, like trying to paint an exact replica of the instructor's painting, is likely to cause frustration and disappointment. Instead of focusing on the finished product, the writer, like the painter, must start the process, remain patient, and keep perspective. We learn by doing; we learn by drafting. The writing process helps to refine one's analysis. The analytical process cannot be separated from the writing process, as writing helps and informs thinking and analysis. As writing progresses, a writer might abandon his original analysis and conclusion. As a new legal writer, just as with an amateur painter, there is a learning curve. Through repeated writing exercises and repeated refinement in the process, writing will improve.

### Artistic Creativity

Both painting and writing start with a blank canvas or screen and are creative processes that communicate. An amateur painter may feel restricted and unsure in a Paint Nite class; so too

may a novice legal writer. However, it is important not to hold back. Rather, the writer and painter must participate fully in the work, and be immersed in the project. This is the opportunity to create and communicate with one's own unique perspective.

A student should generally refrain from comparing her work with the work of other students. At Paint Nite, participants often find themselves looking not only at the instructor's painting for reassurance, but also at their neighbors' paintings. These comparisons can make the individual feel like his work is not on par with others. However, it is important to remember that comparison has two sides; there is the side that motivates and inspires the student and there is also the side that leads to a feeling of inadequacy. Students need to create and be inspired by their own work. A student will synthesize the law and communicate her analysis in a particular, unique way. Just like with a law exam where the answer is often "it depends," a student's analysis relies on how she best uses the primary law to her advantage. There is often no one correct answer. Remember that everyone's masterpiece will be different.

### Immersion and Intellectual Focus

Painting and coloring are alternatives to meditation, providing a means of relaxation. These creative activities are considered therapeutic and have actual health benefits.<sup>7</sup> Similarly, immersion in the logical thought process provides intellectual benefits to the painter and also to the legal writer. When we paint or color, we use both hemispheres of the brain, right and left.<sup>8</sup> When we consider balance, make color choices, and apply pencil to paper or paint to canvas, we are working on both problem solving and fine motor skills. This engages areas of the brain that

“Both painting and writing start with a blank canvas or screen and are creative processes that communicate.”

<sup>7</sup> Dana Dovey, *The Therapeutic Science of Adult Coloring Books: How This Childhood Pastime Helps Adults Relieve Stress*, MEDICAL DAILY (Oct. 8, 2015), <http://www.medicaldaily.com/therapeutic-science-adult-coloring-books-how-childhood-pastime-helps-adults-356280>.

<sup>8</sup> Dr. Nikki Martinez, *Seven Reasons Adult Coloring Books Are Great for Your Mental, Emotional and Intellectual Health*, THE HUFFINGTON POST (Nov. 24, 2015), [http://www.huffingtonpost.com/dr-nikki-martinez-psyd-lcpc/7-reasons-adult-coloring-books-are-great-for-your-mental-emotional-and-intellectual-health\\_b\\_8626136.html](http://www.huffingtonpost.com/dr-nikki-martinez-psyd-lcpc/7-reasons-adult-coloring-books-are-great-for-your-mental-emotional-and-intellectual-health_b_8626136.html).

enhance focus and concentration, and helps develop organizational skills. Frontal lobes are responsible for these higher-level activities and functions of the brain, and coloring intricate pictures stimulates these properties.<sup>9</sup> Engaging both sides of the brain provides intellectual benefits, and painting itself is a form of “play,” which is essential for brain development.

This is similar to what occurs when students synthesize the law and immerse themselves in legal issues that must then be communicated to the reader. Memos must be well organized and balanced. This intellectual focus is called upon, for example, when arranging materials into an outline. Good organization is critical to legal writing because it is a highly structured form of expression, as rules of law are structured concepts. The rule framework governs the organization of its application to the facts, and therefore the discussion and analysis in a memo. For example, the focus required for outlining can be particularly arduous for the novice legal writer, and must be kept in mind throughout the overall memo development. Like the finished painting, a writer’s finished project relies on effectively communicating the many dimensions of the legal issue addressed. The reasoning needs to be clear so the reader is convinced that the conclusion and prediction are logical and well supported.

#### New Skill Development

Amateur painters at painting parties often get anxious that they cannot paint. Similarly, anxiety is common among new legal writers. Amateur painters listen intently to each instruction, as if afraid to make a mistake and botch the canvas or “color outside the lines.” Painting instructors often need to temper anxieties by reminding novice painters to stick with it and, more importantly, that changes can be easily made. These supportive reminders are similar to the way instructors encourage students that written drafts can be easily revised. Eventually, as painters become more comfortable, self-expression seems to flow more naturally; students, too become more relaxed and confident the more that they write.

During the first year of law school, students are learning many new skills along with this new form of writing. Some students feel as if the rug has been pulled out from under them, as they are thrown into this new world of law. Confidence levels can be very shaky. Legal writing students need support and encouragement to “just try it.” For example, after instruction regarding the use of signals and parentheticals, many students resist using them. Writing parentheticals is a new skill, and students need encouragement so they will not be afraid to fail. At the beginning of the year, CREAC is a new skill, and many classes are spent discussing CREAC and its importance as a useful paradigm in legal writing.<sup>10</sup> Yet, some students shy away from following the CREAC paradigm because it is different from other writing they have done. As students practice and learn a new style of writing, and build upon all of the new skills they are learning, they will develop a professional voice in their legal analysis and legal writing.

#### Techniques

Another piece of useful advice, for both Paint Nite participants and legal writing novices, is that it is helpful to break the project into manageable pieces, just as it is with any daunting task. At Paint Nite, the picture emerges one step at a time. For example, instructors suggest that participants first paint the background with a broad brush, take a break to let the paint dry, then return for the next layer of trees, which requires a smaller paintbrush and a different color. The next task may call for the painter to get creative using different colors, perhaps even blending colors together. If the Paint Nite instructor just told the class to complete the painting in one linear process, participants would likely be overwhelmed and the finished painting likely unrecognizable.

Writing requires a similar approach; it is not a linear process. It is important to convey to students that it is unrealistic to plan to write a first draft from beginning to end in one sitting. Legal writers

<sup>9</sup> *Id.*

<sup>10</sup> IRAC, TREAC, etc.

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must build in time to “let the paint dry,” step back and gain perspective before moving ahead with the next section or the next revisions. This allows the writer to be mindful of both large and small scale organization. They must make sure they are synthesizing the law correctly and conveying their analysis clearly. Writers, like painters, must pay attention to the big picture as well as the details.

Legal writing instructors share many techniques learned through their own writing experience to help inform the novice writer. Useful tips and empathy with beginning legal writers are also found in many of our other life experiences as well, even Paint Nites.

“Writers, like painters, must pay attention to the big picture as well as the details.”

### Micro Essay: Digital Natives

Touch typing is all well and good, but the ability to properly format a Microsoft Word document is a critical skill that many so-called Digital Natives lack. Styles and headings, find and replace, paste special, and format painter are all important features for prospective lawyers to master. Since lawyers don't have time to go to training, mainly because it doesn't count as billable hours, it's more important than ever to master these word processing skills during law school. Document drafting is the ultimate practical skill. Law librarians and legal writing teachers could offer a transactional drafting course to cover both.

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