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Writing in the Legal Profession: An Overview

Gonzales v. Raich 545 U.S. 1 (2005)

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Legalese: legal writing has a reputation for being so intensely complicated, archaic, and nebulous that this word has been coined solely to refer to the often incompressible jargon that is legal writing. While not all legal documents are verbose and obscure, in general, legal writing is a highly formal and technical form of expression used to convey legal analysis, judgments, rights, and duties. In broad terms, there are three types of legal writing, and while each has its own intricate purpose and highly specialized vocabulary, they all share the same fundamental characteristics.

The first, and arguably most common, form of legal writing is persuasive in nature (Radulescu 368). Persuasive legal writing, used exclusively in case briefs, negotiation letters, and court decisions, is a form of legal writing that requires lawyers to present their own or their client's position in the best possible light in order to persuade a higher authority of its validity (Radulescu 368). Judges, by contrast, do not write to persuade a higher authority, but rather to convey their reasoning as authorities on a certain issue. The second type of writing common in the legal profession arises in the context of inter-office memorandums and letters to clients. Attorneys normally intend this type of writing to inform a client or legal partner of the strengths and weaknesses of a certain perspective on a legal issue. Attorneys create legal memorandums and letters in a way that takes into account the background knowledge of the intended audience. Briefs to judges and memorandums to law firm

associates and partners are usually more formal, employing precise legal terms, while letters to clients are inclined to be less formal, using more generally comprehensible terminology (Radulescu 370). The third type of legal writing is found in legal documents, such as contracts, wills, and deeds. Attorneys usually employ a form or template in drafting such documents, but this still requires updates and modification with each separate use. Each of these forms of legal writing relies heavily on authority, or precedent. Generally defined, precedent simply means the way a particular action has been done before; however, in the legal profession, precedent takes on a more specialized meaning (Radulescu 371). In legal writing, especially persuasive writing, precedent does not only refer to past practices, but to previous court rulings on a particular legal issue.

Across the legal profession, writing is very cohesive with little to no stylistic deviation. Audrey Beck, a student at Notre Dame Law School, gives a reason for this saying, “Legal education is as much about learning how to explain the law to demanding audiences [through writing] as it is about studying the law itself.” Because of legal education’s intense focus on mode of expression, writing throughout the profession is standardized.

Gonzales v. Raich, an example of persuasive legal writing, is a Supreme Court case addressing the legitimacy of Congress’ power under the Commerce Clause of the United States Constitution to enforce the Federal Controlled Substances Act (CSA), which prohibits the intrastate, non-commercial, private cultivation and use of marijuana. The Court ruled that even though the plaintiff’s activities were local and non-commercial, the activities, taken in the aggregate, could have a substantial economic effect on interstate commerce, and are therefore under the authority of the Commerce Clause.

As is common in all case briefs and court rulings, *Gonzales v. Raich* is a persuasive document with a formal style that uses a technical and specialized vocabulary to detail the legal facets of a certain issue. The *Gonzales* Court’s majority directs the opinion first to the principal parties, followed by Congress, and the legal community to whom it may be relevant in varying degrees. It is structured similarly to an argumentative essay, complete with a thesis, supporting evidence in the form of references to precedent,

response to counterarguments, and conclusion. In the mode of legal writing, Gonzales relies heavily on legal terminology and appeals to precedent to justify its verdict. Gonzales not only uses Latin terms such as “de minimis,” but also uses relatively common words in uncommon ways. For example, the legal community, the Gonzales Court included, uses the formal definition of the word “moment,” as a synonym of importance, rather than its more common meaning referring to a period of time. Gonzales also uses specialized terms such as “substantial effect,” “separate and distinct,” and “rational basis.” Although these terms are in the common vernacular, the legal sense of such terms often refers to a specific process or test that justifies its use. Gonzales heavily utilizes active voice; however, passive voice also appears throughout, albeit sparingly.

Although legal writing can take several, varied forms, its main characteristics, such as its highly technical, formal style and its specialized terminology, remain functionally the same throughout the different forms of writing within the profession.

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