Episode 11: Legal Writing 101

Lee Burgess: Hello and welcome to the Law School Toolbox podcast. Today we're going to be talking about your legal writing class and legal writing in general and how you can become great at it. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience so you'll be the best law student and lawyer you can be. We're the co creators of the Law School Toolbox, the Bar Exam Toolbox, the Catapult Conference, and the Trebuchet Legal Career site. Alison also runs the Girl's Guide to Law School. If you enjoy the show, please leave a review on iTunes. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolbox.com and we'd love to hear from you. And with that, let's get started.

Alison Monahan: Welcome back to the Law School Toolbox podcast. Today we're going to be talking about legal research and writing. So without further ado, let's get started.

Lee Burgess: If you are a new law student, you are likely enrolled in a legal research and writing class, or in some schools they call it legal research writing and analysis, LRWA.
This is one of those classes that can really strike fear into the hearts of law students. It was kind of intimidating for me, Alison. Were you intimidated by your legal writing class when you started law school?

Alison Monahan: I was to a certain extent. I mean, to be honest, I mostly just found it sort of boring.
Particularly, I remember not really liking the book that they gave us that we were supposed to be working out of a sort of like your primer on legal writing and research didn't seem like it was really that helpful. So I don't think I did particularly well in the first sort of couple of assignments that we had.
So I remember, you know, going to talk to my Legal Writing professor and just being like, I don't understand. Like, what are you looking for? Mm-hmm . Remember being incredibly time consuming as well

Lee Burgess:. I think that's one of the things that makes LRW so difficult for most students is that the papers and the assignments can become incredibly time consuming and challenging.
I think you can really go into a black hole of just spending a lot of your free time working on these assignments.

Episode 11: Legal Writing 101

Alison Monahan: Yeah, definitely. You know, it always seemed like they sort of fell at the worst possible times. You know, it'd be like right before a break or something, you'd have a paper due. Yeah, I remember just spending like hours and hours and hours, like, trying to find the right cases and doing the research and writing. And yeah, it can really kind of block out everything else you need to be working on.

Lee Burgess: And I think there's also something about Having to write in this different way than you might have been writing before, that also can make legal writing so challenging for a lot of students.

Alison Monahan: Yeah, I mean, you know, I think most people in law school think that they're pretty good writers, right? I mean, you don't go to law school if you think you're a terrible writer.

Lee Burgess: One would hope not.

Alison Monahan: It's just not, you know, like you don't, that's just not where you end up. You know, so I think for a lot of people particularly, you know, the sort of stereotype of the law student who like didn't really know what to do with their lives and well, they're good at, they're an English major and they're good at writing and they want to be writers.
I mean, A, if you want to be a writer, go be a writer. Go to journalism school. Don't go to law school. But you know, in fairness, lawyers, I mean, writing is basically what most lawyers do. So it's an incredibly important skill set. But I think it's important to realize that's different than the writing that a journalist might do or a novelist might do.
Like it's a very, very specific type of writing.

Lee Burgess: I also think that citations in the blue book and things like that can be very intimidating for folks unless you come from a science background or I was a psychology major and we had to footnote everything. I think that can create a lot of angst for law students when they realize they have to literally cite almost every sentence in everything that they write.

Alison Monahan: Yeah, I guess I grabbed two pieces to that puzzle. One is the fact that you have to actually have support for the statements that you're making. But two is just literally doing the citations in this blue book format, I think is very confusing oftentimes.

Episode 11: Legal Writing 101

Lee Burgess: Yes.

Alison Monahan: It's not like I had, I was a sociology major, I wrote a thesis, like I had done citations before.
But the blue book is just like a whole other can of worms.

Lee Burgess: It is. And I think people really underestimate the time and energy it takes to do blue book citations.

Alison Monahan: Oh, it is so boring.

Lee Burgess: So boring. And it takes a lot of. attention to detail, and you should not do it at four in the morning before your assignment is due.

Alison Monahan: No, definitely not. I remember my moot court partner decided he was going to find and replace, like, some specific citation maybe an hour before our documents were due. And he accidentally screwed up, like, every citation in the paper, and it was just a complete and total nightmare. Yeah. So don't, don't do that.

Lee Burgess: Yeah, that's a bad idea.

Alison Monahan: I was just like, you did what? Like, why are you making major edits to your citations an hour before we have to turn this in? Like, I'm gonna kill you right now.

Lee Burgess: Yeah. Okay.

Alison Monahan: Yeah, it's like, it just makes you cringe.

Lee Burgess: It does make you cringe. So there are things that make these classes are really challenging, but there are a lot of different types of legal writing assignments that you might actually see over the course of legal writing.
You may have legal writing for a semester, you may have a year worth of legal writing, but there are going to be different options. So there are a few different types of assignments, such as those where we call it a closed universe versus an open universe. So these classes aren't just focused on writing, they're usually focused on research and writing. Sometimes they might give you a packet of cases and statutes that you have to work from, or oftentimes later in the semester or the year, they actually require you to go out and do all of your own

legal research. Alison, did you have both of these types of assignments as part of your legal writing program?

Alison Monahan: Yeah, we had a semester course and I think, you know, the closed universe assignment is sort of like the training wheels approach. You know, it's like you're not going to just go out and ride the bicycle. They're going to give you some training wheels first. So your initial assignments in legal writing, are probably going to have some sort of closed universe aspect to them, either, you know. You'll be told where to look for the research and you go do the research or they give you literally like, here's the information. Here are the cases that are relevant to this assignment. Here are the statutes that are relevant to this assignment. And I think most schools are like that because it's, you know, to really throw you in the deep end of just being like, oh, here's a problem. Like go solve it. I think it's just too much.

Lee Burgess: Yeah, I think so. Ours was an entire year, although the second semester of the class half ended halfway through the semester.
So maybe it's. Like two thirds of a year, I'm not sure. Yeah. But the fall was all closed universe. And then the spring was open Universe assignments.

Alison Monahan: Yeah, so ours was like, we had a one semester of legal writing and then we had a one semester of moot court.

Lee Burgess: Mm. We also did moot court, but it was the last part of that semester.
We didn't have legal writing, so it was about the same. Yeah, it was a little bit different.

Alison Monahan: Yeah. Basically about the same.

Lee Burgess: Okay, so you have these different types of assignments that will really require you to do research in a different way. Do you think do you think one of them is easier than the other, Alison?
Closed versus open?

Alison Monahan: Well, I think, yeah, I think the closed universe assignment inherently is sort of easier because it's more constrained. I mean, the problem with these open universe assignments is that there's probably always that one more case that you could go look for and people get really obsessed about finding like more cases than their classmates or whatever, or at least with the open or the closed universe, at least you're like, okay, these are the materials that I have to work

with.
And the other thing is, if you do something later for the writing competition, To get on a journal, that's also typically a closed universe assignment. So, you know, it's good practice in your legal writing class for these later assignments as well.

Lee Burgess: It's true. I think closed universe assignments were sometimes frustrating to me because I'm an information collector, and so I like to go out and read more that was given to me, but once I realized that they were basically a puzzle or a game, and you were given the pieces of the puzzle and you had to put them together, they started to make a little more sense to me.

Alison Monahan: Yeah, let me just ask you one thing. We were talking about legal writing. Are you also thinking of exams, or are you thinking of this as something totally different?

Lee Burgess: I think this is totally different, although, we didn't really have exams in our legal writing class. We had papers.

Alison Monahan: But I was thinking of substantive exams.

Lee Burgess: Oh, substantive exams. I mean, no, I'm talking pretty much just about your legal research and writing class.

Alison Monahan: Okay.

Lee Burgess: Because we'll talk probably in a future podcast about open book exams versus closed book exams. Those are a little bit different.

Alison Monahan: Yeah, I mean, I think there's, I think there's a lot of overlap between your legal writing assignment and your legal writing class and writing a law school exam, but I agree with you, they're, they're a different beast.

Lee Burgess: Yeah, but the skills needed for one are often the skills needed for the other.

Alison Monahan: Right, because you're learning to do analysis and you, you know, you're making an argument, you're thinking clearly, writing clearly. It's just a bit, I mean, obviously the stuff that you turn in for your legal writing class is going to be a lot more polished because you're not taking it in a three or four hour test.

Lee Burgess: Right.

Episode 11: Legal Writing 101

Alison Monahan: You know, you're really dotting your I's, crossing your T's, making sure all the italics are perfect. You know, it has to be a very perfect document is what you're looking for.

Lee Burgess: The other thing that's important to note when you're Kind of learning about your different types of assignments is whether you are writing in an objective way or persuasive way because some-

Alison Monahan: What do you mean by that?

Lee Burgess: Well, some projects are going to be like an objective memo. Oftentimes this is simulating, you're writing for a boss at your law firm. Where you've gone out and done a lot of research and you're just weighing the research. You're not picking a side versus persuasive memorandums Which are often things that would be filed with the court and then you are standing on your soapbox and arguing for one side as you would, you know, if you were going to court.

Alison Monahan: Yeah, I think that is an interesting point because when you're thinking of, you know, the objective memo, that's literally, as you point out, like, you know, the partner and the law firm doesn't really understand necessarily what the law is on a topic. Or so the client comes to them and says, you know, we're thinking of doing this thing, do you think it's legal?
At that point, you don't want to make an argument from the client's perspective necessarily saying, yes, this is definitely legal. Like they're really asking you for a balanced representation, What is the law? What are you considering doing? How do those things map onto each other? And that's a very different tone than something that you would file if you're in a litigation where you're saying my client is right, your client is wrong, I should win.
I think sometimes students don't understand the tone difference between those things.

Lee Burgess: And that the tone difference is actually persuasive through the entire assignment. I think that's something that sometimes people forget, too. You know, oftentimes both types of memos will have a statement of facts, for instance, where you basically summarize the facts of what's going on.
And an objective memorandum, those facts need to be objective. You're just discussing the facts.

Alison Monahan: You're just saying what they are.

Episode 11: Legal Writing 101

Lee Burgess: Right, exactly. But, you know, in a persuasive memo, you would never, you know, say, and then, you know, my client brutally killed somebody else, right?

Alison Monahan: Right. It would be like, a dead body was discovered.

Lee Burgess: Right, exactly.

Alison Monahan: My client had nothing to do with this.

Lee Burgess: And then so and so died.

Alison Monahan: And then, unfortunately, person X perished.

Lee Burgess: Exactly. So, you know, there are, you really have to be comfortable writing in these different voices, and you really have to, I think, embrace these different voices, because I think writing in a persuasive tone is more fun, because you do get to be a little bit more creative, but you want it to feel very different than your objective writing.

Alison Monahan: Yeah, I mean, I sometimes have students who say, well, Is it cheating if I'm writing a persuasive memo and I'm writing a statement of facts and I like, you know, I want to leave out or I want to, I want to leave out something that's like unfavorable to my client. It's like, well, in the real life, you would leave that out and then you would probably have to negotiate with the other side about like a joint statement of facts, but you don't put it in there the first time around.

Lee Burgess: Or you bury it to make it seem very-

Alison Monahan: Right, you characterize it in a different way that's not as damning. Exactly. Obviously, you You don't want to lie, but there are shades of these. And this is one of the things that people should be paying attention to in their legal writing is how do you, and it seems a little sleazy almost, like, but how do you shade it? You know, how do you shade the facts in a way that, you know, you can get away with in court, basically.

Lee Burgess: Yeah, it's true. And, you know, one of the things that can be kind of fun, if you get really geeky about your legal writing class, is that sometimes, it can, These exercises can actually be fairly entertaining, I think, especially when you are role playing like you're part of a litigation because your job then becomes to pick apart other people's arguments or anticipate other people's arguments.
I remember practicing one of my first jobs on a litigation that I did was

responding to just a pile of motions, eliminate just a huge pile. The plaintiff side had filed, and it became like a game because I would find things that were wrong in them, and then I would go read the cases they were citing and tell them how they were wrong, you know?

Alison Monahan: Yeah, and, you know, I clerked for a judge and it was amazing. It's, it is totally shocking the first time that a co uh, you know, one of the lawyers, it's a federal court, one of the lawyers cites a case, and, you know, even in this case, I actually had a quote from the case, and the other side had also cited the same case, but for the opposite proposition.
So at some point you're like, huh. Something here is not right. And you go look at the case, and one of the lawyers had actually taken out a not. Oh my gosh. And thought they would get away with it. Yeah. And you're just like, are you kidding me? Yeah. Like you, you put an ellipse in for the word not, and thought no one was gonna notice that?
So that's an example of what you cannot get away with in legal writing. It's very true. If the case says one thing, you can't make it say the other thing.

Lee Burgess: And you know, I think sometimes students get very frustrated with legal writing, because legal writing programs can tend to be very strict. You have to turn in your papers by a very strict deadline.
I know at my school, if you turned it in even a minute late, they started deducting points. They would deduct points if you made citation mistakes. They would deduct points if you did not follow the required format that's set out by the assignment. And a lot of people think, oh my gosh, this is so rigid,

Alison Monahan: This is so nit-picky, they're so mean.

Lee Burgess: Right.

Alison Monahan: Haha. Yeah. Until you get a Judge.

Lee Burgess: Exactly. Wait until you get to practicing, because your supervising attorneys and the judges are going to be just as bad, you know? And so learning how to work in this type of environment where these mistakes have real weight to them. It's a good lesson to learn now.
Make your mistakes now so you don't make them in practice.

Alison Monahan: Right, because the reality is, you know, as soon as you do something incredibly stupid like cite a case for the opposite proposition and take out the not, like, do

you think we believe anything you're ever going to say again in court? No. Like, you've just destroyed your credibility.

Lee Burgess: Yeah.

Alison Monahan: And I think it, you know, it's the same with any sort of legal writing. Like, As soon as you make that first mistake or that first misstatement or that first mischaracterization, it really raises a red flag about whether the rest of what you're writing is going to be believable. And you don't want your professor thinking that, and you don't want the judge thinking that.

Lee Burgess: No. And you get better at catching those mistakes, the more of this type of work that you do, but you need to take it seriously to get better at it.

Alison Monahan: Yeah, and I think that's one of the things, you know, the more of these documents that you read, I mean, even. You know, you can read beyond what's given to you in class.
You can go out and just read cases. I mean, you know, anything that's filed in court is basically public. So if you've been assigned a summary judgment motion and you don't feel like you really have a very good sense of kind of what the right tone is or how these typically read, it's perfectly within your capacity to go on PACER, which is where all the federal documents reside, and literally pull, you know, three or four summary judgment motions.
Just look up a famous case. They probably filed for summary judgment.

Lee Burgess: Yep.

Alison Monahan: And you can read them. And you know, a lot of this stuff is just, It's almost like learning a language. Like, you just have to kind of get the rhythm and get the tone of the documents before you can write them yourself. You know, that's one of those things that lawyers do all the time.
I mean, the first thing that you're not going to, you know, if you're a new associate, or you know, you're working in a non profit or whatever, the first time that you get an assignment to do something, you're typically not gonna start from scratch. You're gonna look for an example.

Lee Burgess: Right. And firms often had, my firm had a bank where we could like, find examples of this.

Alison Monahan: Yeah, all of them do. That's the whole point of a law firm. It's like you're not, you're not like creating this stuff from scratch. Right. Like you're drawing on the

collective wisdom. But you know, the reality is like, as soon as a firm files something, unless it's under SEAL, it's a public document, so. You know, you can go and look at it just as easily as someone at the firm can.

Lee Burgess: Right, which is also another reason to get very good at legal writing because it's a public document. Anybody can read it.

Alison Monahan: Exactly. It's gonna be, it's gonna be attached to your name forever.

Lee Burgess: Exactly. So, one of the things that you and I have talked about is that legal writing can be challenging for folks, oftentimes depending on your background or your skill set when you come into law school.
I know that legal writing for me was challenging at first because I did consider myself a pretty good writer, and I had a tough time kind of conforming to the, the formula and the, you know, the way that the legal writing was supposed to be presented. I thought I had great organizational ideas about how to present legal arguments.
And it didn't matter if they were great, they were wrong. So, you know, but I think now we start to see the kind of almost groups of students with similar backgrounds or similar struggles finds to have legal writing be a challenge for them. So the first one that we have talked about is the English or History major. We often hear from these students that they are finding legal writing challenging. Alison, why do you think that the English History, or History majors kind of struggle with legal writing in law school?

Alison Monahan: Well, I think a lot of these people are sort of invested in the idea that they are good writers in general.
But you know, if what you've been writing is poetry or You know, a treatise on some specific piece of history where it's kind of, you know, I don't know. I don't, I don't really read history, but I don't know what historians do. I think they do an essay on something or other, uh, where, I mean, I think historians are a little different because I think they're, they at least are drawing on evidence.
And, you know, I'm sure like my, friend who is a English professor would tell me that she is also drawing on evidence, but its a different way of using evidence.

Lee Burgess: I also find that students, especially English majors, are so focused on the, you know, on the way that their prose sounds. It's the crafting, the art of the writing that they lose the fact that law school in the beginning isn't as worried about the craft as much more worried about the having the practical pieces of the puzzle there.

Episode 11: Legal Writing 101

Alison Monahan: Right. And it, it becomes very dry and it doesn't, I mean, most legal writing frankly doesn't sound that great in the beginning. It becomes very. Sort of formulaic. You know, the people who tend to do better actually initially are people maybe who have studied philosophy, because if you're a philosopher, you are used to using the concepts of formal logic.

Lee Burgess: Mm-hmm.

Alison Monahan: And logic is really what legal writing is about. You know, it's not just like, oh, my client shouldn't be guilty because like. I don't, they had like a rough life or whatever. You know, it's like, that's not what we're asking. You know, we're not asking for an essay about like the difficulty of growing up in a bad neighborhood.

That's not what this is about. This is about, You know, they're the elements of the crime of assault or battery, and those are, you know, an unintended touching, blah, blah, blah, blah, blah, whatever they are, and you have to literally go through them one by one, and no one really cares about, you know, your client's, like, mother, but sometimes people want to kind of go off on these tangents that are not, strictly speaking, that relevant and, like, the creativity issue. If you're used to doing creative writing, that can be a lot more fun than doing legal writing.

Lee Burgess: That's true. I mean, legal writing, especially when you're not comfortable with it, I think is very boring.

Alison Monahan: It's just, it's just, yeah, I think it's frustrating. But I think your, your approach of thinking about it as a game or as a puzzle or a problem can actually make it more interesting and can make you better at it because then it's like, you know, what are the pieces?
And the pieces are basically like these little puzzle pieces of the law. And you fit those pieces together and then, you know, you go through them one by one and then you're looking more at it from the perspective of almost like a, an investigator or something. Well, once you have the law, you can be like, oh, like, you know, what are the, what are the pieces of, what are the pieces of the facts that I can dig into? And it can become kind of fun.

Lee Burgess: And flash forward to you know, three years from now, these types of closed universe writing assignments are part of the bar exam in almost every state called the performance test. Very good point. Very good point. So you're also laying the foundation by doing these assignments in your legal writing class for

passing the bar, which I think the performance test is the best part of the bar exam because you absolutely don't have to know any law whatsoever to pass it. So you can just work on this craft while you're a 1L in your legal writing class and just get better at it through law school. And then magically you can be successful on this part of the bar exam. without having to learn any more law. Doesn't that sound amusing?

Alison Monahan: I have no doubt that's why I passed the California bar exam.
Yeah, because I looked at, I looked at the performance test as just free points for people who are good writers, and I'm like. I am good at legal writing. I can do this. Yeah. Whereas my substantive knowledge was definitely not in the upper echelon.

Lee Burgess: Minimum competency. Yeah. Yeah, exactly.

Alison Monahan: But no, I mean, seriously, like, I don't think I would have passed the bar if they hadn't had the performance test.

Lee Burgess: Yeah. So, and a lot of people struggle with the performance test. So, it's just one of those things that you can't say, oh, I'm not good at this and just like shove it off because it's going to come back. in the future.

Alison Monahan: Well, and I mean, it's also like, this is what lawyers do.

Lee Burgess: Well, that's true too.

Alison Monahan: You know, even if you think that you're going to be a trial lawyer, like most of what you do is not standing up in court and giving a closing argument.
And if you did, you still had to write the closing argument.

Lee Burgess: Yeah.

Alison Monahan: So I think people sometimes underestimate the importance of legal writing as a skill and just think like, oh, I just have to get through this class. I never have to do this again. It's like, no, this is what the profession is about.

Lee Burgess: Yeah. This is part of your craft.

Alison Monahan: It is the craft. There's basically nothing else. Like, legal research and writing is what lawyers do.

Episode 11: Legal Writing 101

Lee Burgess: That's true. Sometimes they talk about it, but they still have to do legal research and writing.

Alison Monahan: Right. I mean, they still basically, you know, if you're, even if you're in court, you know, you've still scripted basically what you want to say.
You've still scripted essentially your arguments you want to make. You might not get to stand up and just say them, but you know, you're not going in cold.

Lee Burgess: It's true. Now, what about science technology majors? Because I think I've seen. As a, as a group of people, science and technology majors do pretty well in legal writing because they're used to writing dry, logical, formulaic papers.

Alison Monahan: I think they can. I mean, I think sometimes they struggle just because they're not so used to writing in general. And sometimes, like, particularly if you have, say, a science or technology major for whom English is not a first language, I think that can be problematic. But yeah, I mean, in general. You know, again, these are people who are typically used to thinking in a more structured and more logical way.
And so the idea that, you know, you have a checklist and then you have to like match the checklist of the law against the facts that you've been given and go through them one by one very carefully, very specifically is different than someone who's used to. You know, writing, poetry.

Lee Burgess: Right. It's true. You made an interesting point about students where English is not their first language.
We have a number of tutoring students that we work with who are kind of in this camp. Why do you think, I mean, Of course, any, I am so impressed with anyone who goes to law school where English is not their first language because I can't imagine going to law school in a, like, in my second language.

Alison Monahan: Definitely. I mean, it's amazing that anyone even, like, attempts this.

Lee Burgess: It's, it's amazing. But, you know, I think when, when you are taking this on, when English is not your first language, you know, what are the elements of legal writing that I think are even more difficult for somebody kind of coming at it from this perspective?

Alison Monahan: Well, I think there are a couple of things. I think one is just literally the writing. You know, you've got to, and typically I think people probably want to team up with someone, whether it's like a classmate for whom English is their native

language or someone in like the writing center or their TA or whatever, because a lot of it is just, you know, lawyers are writing at pretty high level.
And a lot of the sort of mistakes that you might make as a second language learner, you know, just like little things like prepositions, things like that. Like you just want to make sure your writing is as clean as it can be. But also I think there's just in some cases a lack of exposure to the American system.
So, you know, you might not have, you may have less of a conception of kind of like what legal writing looks like. So you might have to spend more time. You know, reading extra materials or reviewing, you know, a couple of examples of the document you're being asked to create. I don't know, what do you think?

Lee Burgess: I think that's a good idea. And also just be ready to do a lot of rewriting as a form of learning. I think, you know, getting feedback on your work from your professors, from a TA, from you know, a tutor, from your legal, well, I'm blanking on the name of it, the academic support office. There we go.

Alison Monahan: Well, and a lot of, a lot of universities, if you're at a larger university, a lot of universities actually have a writing center.
And so that can be a great way for law students to get help with their assignments is, you know, they're, they're designed really to help you become a better writer.

Lee Burgess: Right. And so if you, but just buy into the fact that that is going to be part of the process and so-

Alison Monahan: That's what you're learning. That's part of, it's part of the reason that you're in law school and in the U.S. is that. You know, you want to learn how to write in a way that is, like, higher than what you're doing now.

Lee Burgess: What about students who have other learning challenges, like ADHD? We see a lot come up with law students or other attention deficits. learning disabilities that can make, I think, some of this legal writing more challenging.
What have, could have you seen that students can do to help that be a bit more successful on legal writing when they are kind of coming at it from this perspective?

Alison Monahan: Well, I think legal writing's one issue, and I think the research in this case is actually like an even bigger issue. Because I think it's so easy for people who have ADHD to be To get overwhelmed when specifically when you have an open universe, research assignment.

Episode 11: Legal Writing 101

So I think, you know, most people probably have some sense of how they need to organize the information, but I think just being aware from the beginning and the same thing in apply in legal writing too, if you're writing, you know, a longer document, you're going to need to figure out a way to have structure.
And I think that structure can sometimes be challenging. So I think that's just something to be aware of. And to work with whatever resources you can find, whether it's going to your legal writing professor and saying, you know, this is an issue that I struggle with. Could you help me like structure my outline for writing the paper?
And to do that early, not to wait until, like, the day before.

Lee Burgess: Exactly. And also to really focus on the organization of your materials as well as the organization of your work. But especially if you are doing your own legal research, you know, having a binder, keeping cases that you're going to. I always had a binder that had, because I was still printing everything out, that had two sections.
It was, like, cases that I decided were, like, in the yes camp and cases that were not in the US camp, but I still kept them so I wouldn't find them again.

Alison Monahan: Yeah, that's annoying when you're like, oh, I'm reading this case. Like I read this last week. But you've got to, you've got to have some sort of organization.
What, One tool technology wise that people might find interesting is Trello,

Lee Burgess: Which is like our answer to everything.

Alison Monahan: T R E L L O. But you can make these boards and you know, I can envision a really useful board. For doing legal research where you can like move, you can move cases around, like they're like little sticky notes, basically, but virtual, you know, I can imagine.
We could just as well as having your binder, or instead of having your binder, you could have a column where it's like, these are the ones I'm using. These are the ones I'm not using, and these are the ones I still need to read, or whatever.

Lee Burgess: Yeah, and then I could also even see working on your initial outline on Trello.
So you could move stuff around.

Alison Monahan: That's a good idea.

Lee Burgess: Now I'm just having all sorts of Trello dreams right now. We should totally do a post about this. Yeah, coming soon, another, more posts on how much we love

Episode 11: Legal Writing 101

Trello, basically. It's a great resource. It's really fantastic. It is. Okay, so how do you get better at legal writing?
Basically, if you're, you're worried about it, or if you're listening to this and you're in it and you're struggling what do we need to do to get better at it? What's always your first stop Alison, on your help list with legal writing?

Alison Monahan: Well, I mean, the first thing I would encourage people to always do in this scenario is to talk to their professor because particularly legal writing, these are people whose job it is to help you learn how to do this.
And typically, you know, you're dealing with a much smaller group of people and the idea is that the person who's teaching you really should have the time. to work with you one on one. And so that's always the first thing, like, you know, have you talked to your professor about this? Like, what did they say?

Lee Burgess: Yeah, I think professors can be incredibly helpful. And if your help, professor is not helpful, look at your other resources at school, like academic support or TA, to see if you can get some additional support.

Alison Monahan: Right, and if you need help with your research, sometimes, as long as you're allowed to talk to them, the law librarians are a great resource that are totally underused.
I mean, these people, they're trained, it's their job to do research. Right. And so, you know, they might have a suggestion of how to get started on your legal research that you've never even heard of.

Lee Burgess: Uh huh. You know, we also find people get frustrated with legal writing, and so they stop. Really trying hard on them and they just kind of mail it in and I think that's really a mistake because usually you're going to have intermittent assignments throughout the semester and this is your opportunity to get feedback and go to your professor and learn so when it gets to the graded exam you hopefully don't repeat mistakes.
So really going all in and making the most of those assignments so you can get the very important feedback that you need.

Alison Monahan: That's a great point because most of your substantive classes, you're not going to get a lot of feedback on your writing. But this is really your chance to get feedback on like what you need to do better and what you're doing well and what you need to improve.

Episode 11: Legal Writing 101

Lee Burgess: One of the other things that I did when I was trying to work on my own legal writing style is as I was doing my research, I would find court opinions that were doing a similar analysis to what I was being asked to do and really try and mimic them because I thought they were quite good. And when you're learning something new, sometimes the best way to learn is to mimic other people and I just talked to my son who likes to mimic all sorts of things I do now which is fun.

Alison Monahan: That's how we learn.

Lee Burgess: Exactly, all at the same time. But when I started saying, okay, I like how they, you know, framed this argument, I liked the words that they used. Wow, this sounds really clear and concise and clean. I'm going to borrow some of those elements and incorporate them into my legal writing assignment and then that was the first legal writing assignment that I high scored the class.

Alison Monahan: Right. And I think, you know, lawyers keep these too. They, you know, they keep like clip files of if you see really great brief, you know, I knew lawyers who would print that out and have it in a file in their office. And 10 years later, they might go back and be like, yeah, I want to make that same argument.

Lee Burgess: Yeah, so learn from others and it's okay to, you know, take these tips from others legal, other, you know, the courts or briefs and incorporate it into your own.

Alison Monahan: Law is all about precedent.

Lee Burgess: It is. So what about focusing on, you know, this IRAC formula or using the pieces of the IRAC in legal writing?
Do you kind of always have to have those elements in your legal writing to be successful?

Alison Monahan: Well, it obviously depends on what your professor wants. And this is a class where, more than any other, your job is to figure out, in some ways, what your professor is looking for. And sometimes they'll tell you, sometimes they won't. But in the basic elements of IRAC, you know, what's the issue? What's the rule that we're using? And then doing your analysis and drawing a conclusion, I think, have to be in anything as far as, you know, whether the exact structure has to be the issue is, the rule is. You know, that really varies, but certainly in the beginning, I think it's worth doing that just to make sure that you've got all those pieces in there.

Episode 11: Legal Writing 101

Lee Burgess: And it's okay if it sounds formulaic, and it's simple language, and you don't think it sounds particularly, quote, lawyerly in the beginning, because you're not supposed to sound like a very experienced lawyer. You're not one. You're typically a first year law student.

Alison Monahan: Well, but the other side of that coin is even for a very sophisticated lawyer, often their goal is to simplify.
You know, people, students sometimes think you have to have this like amazingly complicated argument, but the best lawyers I knew were able to explain things in the simplest terms because that's what gets the jury on board. That's what gets the judge on board. You know, if I, as a clerk, if I was reading, A brief in that brief said, you know, the three key things we need to decide are X, Y, and Z.
Here's why my client should win on X. Here's why they should win on Y. Here's why they should win on Z. I'm like, Oh, okay. That's great. If it was like, you know, we're going to create like an entirely new blah de da da and they're like going in, it's flowery language. I'm like, what are you talking about? Just like, get to the point.

Lee Burgess: It's true. And don't use the words that you think make yourself sound lawyerly.

Alison Monahan: Or the Latin. Like I still don't know what inter alia means, you know, like. I was like top of my class at Columbia. I can't tell you what inter alia just use the English. Like it's not, it doesn't make you sound smart to use Latin.
It's just annoying. So what is it like among other things? I don't even know. It's just like use the English.

Lee Burgess: Yeah. I stopped. Yeah. And you'd never see that stuff in practice really either.

Alison Monahan: Well, sometimes you do, and you're like, God, this person is so pompous.

Lee Burgess: That's true. So just like if you are, you know, remember when you were studying another language or you were a kid and you were learning something hard, you always start learning simple things, simple statements, simple sentences, and then you get more complicated as you get more comfortable. And so you can always just remember if you're feeling like your writing is a little formulaic and dry, you're just in the beginning stages and you can continue to work to, you know, make it feel more sophisticated and more refined.
Yet still very direct and simple and easy to, uh, to observe.

Episode 11: Legal Writing 101

Alison Monahan: Right, you make a sophisticated argument, but in a simple way of writing. That's your goal.

Lee Burgess: And what else? You know, one of the other things we have talked about and actually a new member of our team was speaking to us about was the importance of really focusing in on details and being very specific about facts and about law.
Alison could you elaborate a little more on that?

Alison Monahan: Well, I mean, that's what lawyers do. You know, lawyers are nit-picky, so I think sometimes students underestimate the degree to which they need to be specific, and that they need to be careful in terms of categorizing the facts. So, you know, if you have an assignment, your professor has picked those facts for a reason and for you to mischaracterize the facts, just, it's not like, it doesn't, that's missing the point.
So, you know, if, if there's a whole discussion of a close issue and in your legal writing you say, well, clearly blah, blah, blah. It's like clearly? Really?

Lee Burgess: Mm-hmm . It's true. So, just things to continue to think about, oftentimes, being that kind of detail oriented or looking at the specifics.

Alison Monahan: Anal retentive, we could say.

Lee Burgess: Or anal retentive, isn't maybe how you had to be before you went to law school, but it is very important to inject that into all of your legal work, whether it's your legal writing class or your law school classes and exams.

Alison Monahan: Yeah, because that's the point. I mean, that's what we, that's what we argue about as lawyers are, you know, these nit-picky details.

Lee Burgess: Yeah. All right. Well, we hope that this has, uh, given you a good primer on being successful in your legal writing class, but with that, we are out of time. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on iTunes. We'd really appreciate it.
And be sure to subscribe so you don't miss anything in the future. If you have any questions or comments, please don't hesitate to reach out to me or Alison at Lee, L E E @LawSchoolToolbox.com or Alison, A L I S O N @LawSchoolToolbox.com or you can always contact us via our website contact form at LawSchoolToolbox.com. Thanks for listening and we'll talk soon. Good luck with your first year of law school.