

Teaching to Different Levels of Experience: What I Learned from Working with Experienced Writers from Different Fields

By Ann M. Piccard

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Legal writing teachers have certain requirements that we feel must be met in each piece of student writing. Most significantly, we expect to see analysis that follows a predictable, logical pattern, whether it be IRAC,¹ CREAC,² or some variation thereon.³ However, not all of our students come to us fresh from undergraduate school; many arrive after, or even during, careers in which they have developed an effective writing style of their own.⁴ Our response to these students' writing should demonstrate thoughtful consideration of the experiences that they bring to the classroom.

As the U.S. economy weakens and jobs are lost,⁵ law schools can expect to see an increase in the enrollment numbers for nontraditional students. These may be professionals from other fields who have been writing successfully in the workplace for decades; some may even be older than the faculty

employed to teach them. In the field of legal writing this presents a particular challenge for teachers because experienced writers will wonder why they should be expected to abandon the writing habits and preferences that have served them so well over the years. It is, indeed, a legitimate question, and one the legal writing faculty should be prepared to address.

The ultimate answer is that successful experienced writers should not be expected to start from scratch when they enroll in a legal writing class. There is no reason they cannot be taught to adapt existing skills to suit a new audience. Legal writing teachers can often be heard to complain about the utter lack of writing experience in students who come to law school in their early or mid-20s, fresh from college; we wonder what these kids are being taught in college these days. We should celebrate, then, when we encounter students who arrive with years of writing experience in other fields. It may require some flexibility on our parts, but that is nothing more than we ask of our students: the ability to adapt is a key to success in legal writing.⁶

It is important to clarify what is meant by the term "experienced" writers. Not all nontraditional students are part time, and not all part-time students are experienced. Not all nontraditional students have been successful writers. Doctors, for example, are not always skilled writers, although certainly some of them are; their particular brand of professional success may have been attained without the need for much writing at all.⁷ The focus

“We should celebrate, then, when we encounter students who arrive with years of writing experience in other fields.”

¹ Judith B. Tracy, “I See and I Remember; I Do and Understand”: Teaching Fundamental Structure in Legal Writing Through the Use of Samples, 21 *Touro L. Rev.* 297, 310–11 n.27 (2005).

² Joel R. Cornwell, *Languages of a Divided Kingdom: Logic and Literacy in the Writing Curriculum*, 34 *J. Marshall L. Rev.* 49, 56 (2000).

³ Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 *Mercer L. Rev.* 621, 624 n.12 (2006).

⁴ According to Dean Darby Dickerson’s 2008 State of the Law School address at Stetson University College of Law (Sept. 3, 2008), 25 percent of Stetson’s Fall 2008 incoming part-time students come to law school having already attained some postgraduate degree. See also, Jean Boylan, *Crossing the Divide: Why Law Schools Should Offer Summer Programs for Non-Traditional Students*, 5 *Scholar* 21, 22 n.4 (2002).

⁵ Louis Uchitelle & Michael M. Grynbaum, *Job Losses Raise Recession Fears*, *N.Y. Times*, Feb. 1, 2008, at A1.

⁶ Amy R. Mashburn, *Can Xenophon Save the Socratic Method?* 30 *T. Jefferson L. Rev.* 597, 632 (2008).

⁷ Several of the part-time classes I have taught have included medical doctors. Some of them have been excellent writers, but others have not.

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of this essay, however, is the student, whether young or old, part time or full time, who brings to law school a well-established set of writing skills that make him or her an effective communicator in one or more other fields, if not yet in the legal field.

First-year legal writing classes may stress the importance of logic almost to the exclusion of anything else: the organizational scheme has to be logical or the written document makes no sense to its intended audience.⁸ We generally require students' papers to fit some formula, optimally based on syllogistic reasoning. We expect to see analogical reasoning demonstrated in a prescribed fashion; this is how we teach legal analysis. Some legal writing teachers even use a template so students can see exactly what their memos are supposed to look like. A fairly strict formula helps many students, particularly those who have spent their whole lives in school and who, as members of Generation Y, are eager to please their teachers by following instructions.⁹

An experienced writer, on the other hand, can be expected to question the need for or usefulness of a rigid approach to writing legal memoranda or briefs. We should encourage these, and all, students to ask the “why” questions in legal writing. Our goal is to have the students produce substantive legal analysis, not to have them blindly follow instructions without question. When we encounter experienced writers in our classrooms, we should encourage them to trust their instincts when they write for us. Too often, these students are discouraged and told that their “style” is wrong for law school.

I began observing the differences between traditional and nontraditional law students in the spring of 2005, when I first taught a group of part-time students. In early office conferences with some

of the nontraditional students I found myself in the slightly uncomfortable position of trying to justify my fairly rigid requirements to people who were, like me, experienced professionals, and whose writing was generally accomplishing its purpose. Of course these students needed to meet the same standards as every other group of legal writing students, but it seemed appropriate to take the students' life experiences into consideration when I evaluated their written work.

In the summer of 2006, I became a returning, experienced, nontraditional, part-time student myself, pursuing an LL.M. degree from the University of London's External Studies Programme.¹⁰ After I adjusted to the initial shock of being a student again, and to the immense amount of self-discipline required as a part-timer, I began to see how and why I might reshape my teaching approach based on my experience as a student.

A useful place to begin seemed to be with a writing sample from each student, preferably done in the classroom with no outside assistance. A simple one-paragraph description of a case is enough to serve as a diagnostic tool. From this, the teacher can determine who has the basic level of writing skills necessary to be considered an effective experienced writer. Many students will be neither effective nor experienced writers, and for these it only makes sense to start at the beginning and teach grammar along with logic. Others, however, should be encouraged to adapt and utilize existing skills to achieve the goals of the legal writing course.

IRAC and CREAC are helpful when students are struggling to grasp the concept of analysis, but we should recognize that there are students who come to us as experienced, successful writers, and who may be beyond the need for such strict organizational structures. Certainly, legal analysis is a complex concept that must be taught using some method that the novice writer can understand; IRAC and CREAC and their kin are tools toward that end, but are not necessarily ends unto themselves. It can be

⁸ John C. Dernbach et al., *A Practical Guide to Legal Writing and Legal Method* 115 (2007).

⁹ Much has been written about the current crop of college and graduate students. See, for example, Kristen Peters, *Protecting the Millennial College Student*, 16 S. Cal. Rev. L. & Soc. Just. 431, 466 n.242 (2007).

¹⁰ <www.londonexternal.ac.uk>.

counterproductive and frustrating for both teacher and student to insist that these, and these alone, are the tools for successful legal writing.

This point can be illustrated by considering how two different students, with different levels of writing experience, might approach the analysis of my favorite case, *Miles v. City Council of Augusta*.¹¹ A novice legal writer would be instructed to utilize IRAC or CREAC when applying *Miles* to a hypothetical fact pattern. The resulting analysis might look something like this:

Our client's daughter does not need a business license to operate a lemonade stand in the family's driveway. A business license is only needed if a person supports herself by engaging in the activity for profit. *Miles*, 551 F. Supp. at 353. Our client's daughter will not support herself with the proceeds of her lemonade stand. Because our case is distinguishable from *Miles*, a business license should not be needed.

The result may not be particularly sophisticated, but it is at least organized in a discernible, logical fashion: Conclusion, Rule, Explanation and Analogy, Conclusion. For many legal writing teachers, this novice writer would be well on her way to success.

On the other hand, a student who has been successfully writing in a different field might approach the exercise differently. For example, consider the following paragraph:

Our client's case is distinguishable from *Miles*, so the result should be different. A child selling lemonade does not support herself from the proceeds of her "business," and so should not be expected or required to obtain a business license. If one's rent is paid from funds generated by selling the services of a talking cat, then one is indeed supporting oneself by that enterprise, and a business license is needed. *Id.* at 353. But a child selling lemonade is not "engaged in a business."

¹¹ 551 F. Supp. 349 (S.D. Ga. 1982).

The municipality cannot have intended to include such activity in the business license ordinance. However, it may ultimately be cheaper and easier to obtain the license than to fight city hall.

The second example does not fit the "traditional" organizational scheme, following more of a CARC format (with a recommendation thrown in for good measure), but all of the necessary pieces are actually there. It is also, frankly, a more interesting paragraph to read. But a teacher who is wedded to strict adherence to IRAC or CREAC would probably give the first example paragraph higher marks than the second.

It would be difficult for me to explain to an experienced writer why the second paragraph deserved a lower grade than the first. Adherence to rules for the sake of rules does not make much sense in this context. The writer of the second paragraph is clearly comfortable with his "voice." What would be accomplished by discouraging this previously successful writer? I might urge this writer to focus more on law and less on facts, but I would also urge him to trust his instincts as a writer and maintain his narrative voice. It would be a disservice to this writer for his teacher to reject his experience and effectiveness.¹²

Legal writing teachers can and should be sensitive to students whose life experiences include significant writing. In my first semester of teaching part-time students, I read one paper that stood out from all of the rest because it read like a novel. It was entertaining and enjoyable. But it did not follow the format I had instructed my students to follow in that it contained, interspersed throughout the analysis, some extraneous paragraphs of a very practical and conversational nature. I chose to give

¹² Much has been written lately about metacognition and the importance of thinking about how we learn. See, for example, Andrea A. Curcio, Gregory Todd Jones & Tanya M. Washington, *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 Fla. St. U. L. Rev. 271 (2008); Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 Widener L. Rev. 33 (2006).

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that paper a relatively high grade because it did contain everything I was looking for (and then some) albeit in a different organizational scheme. If the paper had been poorly written, I would not have rewarded its writer. But as a teacher of writing, I could not bring myself to penalize a student whose writing was successful in spite of its differences.

In May of 2007 I sat for my first LL.M. exams; these were the first exams I had written since I took the Florida bar exam in 1985. I had prepared for my exams, substantively and stylistically, hoping to fit my knowledge of the material into the British

academic scheme of things,¹³ but there was no way I could divorce myself entirely from my training and experience in the American legal system. I could only hope that the exam readers¹⁴ would find my efforts acceptable, and my approach recognizable. Apparently I succeeded, and I was quite happy with my grades.¹⁵ Thus, my experience as a student validated my instincts as a teacher: success can come in a variety of forms, and students should not be asked to leave their life experiences outside when they enter our classrooms.

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Another Perspective

“A ‘disorienting moment’ occurs ‘when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner’s prior understanding—referred to in learning theory as “meaning schemes”—of how the world works.’ While the experience of a disorienting moment is often eye-opening, the experience itself is only the first step in the learning process.

Adult learning theorist Jack Mezirow describes two more stages that students must undergo after experiencing the disorienting moment in order truly to learn from their experience: exploration and reflection, then reorientation. Following the first stage of exposure to the disorienting moment, students must have an opportunity to ‘explore and reflect’ upon the disorienting moment before having an opportunity to ‘reorient’ their ‘meaning schemes about justice’ in light of what they have experienced. If a teacher simply exposes students to the disorienting moment and does not ‘provide a proper environment for these three stages to unfold,’ students are more likely to ignore or reject the experience than to learn from it.”

—Emily Hughes, *Taking First-Year Students to Court: Disorienting Moments as Catalysts for Change*, 28 Wash. U. J.L. & Pol’y 11, 16–17 (2008).

¹³ The University advises students to write “academically” rather than succinctly.

¹⁴ Each exam answer is read and evaluated by three different graders.

¹⁵ In August 2008, I received notice from the University of London that I have successfully completed the requirements for the Master of Laws, and that the degree will be awarded “with Merit,” which is similar to Honors.