

## WHY LAW REVIEW STUDENTS WRITE POORLY

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**Teachable Moments for Teachers ...** is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the **Teachable Moments for Students** column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own "teachable moments for teachers" to the editor of the column: Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: [sirico@law.vill.edu](mailto:sirico@law.vill.edu).

Last fall, at the request of our law review, I conducted a three-hour program on legal writing. In these presentations, I always discuss misunderstood and abused punctuation marks, like semicolons. As I explained when a writer might consider using a semicolon, a student raised his hand and asked this question: "Because we have to put a footnote at the end of every sentence, should we use lots of semicolons so that we have longer sentences and need fewer footnotes?"

It took me a second to gain my composure. Although the question gave me the opportunity to rail against the way law reviews footnote to excess, it also gave me an insight into why writing in law reviews is often so poor. Student editors must perform their work within the constraints of curious rules that compel them to write badly.

As teachers, we may criticize the written product. However, unless we recognize the source of the problem, we cannot hope to deal with bad writing successfully. For example, if we advise a student to write shorter sentences, the student may

politely acknowledge our advice with a nod. However, the student may be thinking, "Yes, but with shorter sentences, I will have to spend additional time writing lengthy footnotes that I don't want to write, and, I suspect, no one wants to read." Thus, despite our sound advice, the student most likely will continue to write sentences that could be shorter, crisper, and more comprehensible.

With a little thought, I identified three other traditional rules of law review writing that contribute to poor prose.

**Overly Concise Writing.** Law review editors commonly advise their novice members that the law review can afford to publish only a certain number of pages per volume. Therefore, the advice goes, keep your piece as short as possible by writing as tersely as possible. The advice leads to sentences that are too compact for the reader to understand easily. Although we normally encourage students to keep their sentences short, brevity is not a virtue when it reduces comprehensibility. For example, consider this sentence dealing with whether courts should invalidate an ordinance that makes it illegal for gang members to loiter:

This criminal/noncriminal distinction is important in formulating an analytic model by which to analyze the gang-member status question.

In this sentence, the motivation for conciseness may have led the writer to use two phrases that are awkward and difficult for the reader: "criminal/noncriminal distinction" and "gang-member status question." A writer less concerned with conciseness might have drafted a longer, more readable sentence:

In formulating an analytic model for determining whether to invalidate an ordinance that criminalizes loitering by a gang member, the court would find it helpful to distinguish between status that is criminal in nature and status that is not.

Alternatively, the writer might opt for a longer version that employs more than one sentence:

In ruling on an ordinance that criminalizes loitering by gang members, a court must consider whether loitering is a status crime

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that is unconstitutional. An initial consideration is whether the status here is criminal or noncriminal in nature.

**Not Using the First Person.** Many law reviews still resist or refuse to permit the author to write in the first person. This excessive formalism can lead to stilted and awkward sentences.

Here is an example from my own experience. I once wrote an article arguing that a study of the Shaker religion and its imagery could contribute to an understanding of religion that, in turn, could move legal analysis away from viewing religious issues from a heavily male perspective. For example, one paragraph in my manuscript read as follows:

I employ the Shaker experience to critique American legal analysis. After presenting a brief history of the religion, I discuss two cases whose results seem to stem from male dominated thinking. I then present alternative approaches that reflect an inclusive analysis. Rather than engaging in abstract theological or legal argument, I indicate possible inclusive alternatives through a discussion of Shaker religious practices.

Unfortunately, the law review with which I published had a policy of maintaining complete control over editorial decisions on style. To my disappointment, the editors eliminated my use of the first person. The published version of my paragraph reads this way:

The Shaker experience is here employed to critique American legal analysis. After a brief history of the religion, two cases whose results seem to stem from male dominated thinking are discussed. Then alternative approaches are presented that reflect an inclusive analysis. Rather than engaging in abstract theological or legal argument, possible inclusive alternatives are indicated through a discussion of Shaker religious practices.<sup>1</sup>

The revised version is grammatically correct, except for the dangling participle in the last

sentence. However, because it uses the passive voice in every sentence and often places the passive verb at the very end of the sentence, the paragraph is lifeless. I do not plan on publishing in that journal again.

#### **Limiting Students in Expressing Opinions.**

Law reviews frequently instruct their staffers to limit their opinions to the concluding few pages of a student note or comment. As a result, the bulk of a student piece is a compilation of uninspired information. Student work often reminds me of the observation of folklorist J. Frank Dobie: “The average Ph.D. thesis is nothing but a transfer of bones from one graveyard to another.”<sup>2</sup>

The rule on limiting opinions turns students into drones and teaches them that their judgments are not particularly valuable. Although humility is a virtue, too much humility is not necessarily a good trait for lawyers. From the reader’s viewpoint, a thesis at the beginning of a piece gives the reader a guide for understanding what follows. It also energizes enervated prose.

In one of G. K. Chesterton’s stories, a character proclaims, “It isn’t that they can’t see the solution. It is that they can’t see the problem.”<sup>3</sup> As teachers, we sometimes see the superficial solutions, but do not acknowledge the underlying problems that discourage our students from following our advice. With respect to law review students, to improve their writing, we need to address the defects that infect the law review culture.

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<sup>2</sup> <www.brainyquote.com>.

<sup>3</sup> *The Oxford Dictionary of 20th Century Quotations* (Elizabeth Knowles ed. 1999) (quoting *The Scandal of Father Brown* (1935)).

<sup>1</sup> Louis J. Sirico Jr., *Inclusive Law, Inclusive Religion, and the Shakers*, 34 *J. Church & State* 563, 564 (1992).