

“Practice seems to have forever changed the way I read and write, erasing my memory of how I read before I became a lawyer.”

TEACHING STUDENTS ABOUT THE LEGAL READER: THE READER WHO WON'T BE TAKEN FOR A RIDE

BY JESSICA E. PRICE

Jessica E. Price is an Assistant Professor of Legal Writing at Marquette University Law School in Milwaukee, Wis.

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.

I have just completed my first year of teaching legal writing as a full-time professor. I came to the job from litigation practice, and I assumed that my real-world experience and practical focus would make it easier for me to relate to students. Not long into my first semester of teaching, I began to realize that my practical orientation worked both to my benefit and my disadvantage.

My practical knowledge and experience did help to engage students in the subject, because they were naturally excited to learn about the things that lawyers really do and how to do those things well; at the same time, however, my immersion in law practice put me at a distance from students. Practice seems to have forever changed the way I read and write, erasing my memory of how I read before I became a lawyer. I find that I need to make an extra effort to understand my students' struggles with writing for a legal audience.

The first time I really became aware of the gulf that my practice-based mind-set was creating between my students and me was during a one-on-one conference with a particularly dedicated

student. This student could form a logical syllogism with ease, understood that he had to spell out the reasons behind his conclusions, and had excellent basic writing skills. Yet, his legal writing was just so-so, and I was becoming frustrated with my inability to help him rise to my expectations.

His approach was to build up to his conclusion, explaining each sub-point of the analysis in sequence, and then hitting the reader with the overall conclusion at the end, like a punch line he was waiting to deliver at just the right moment. He also tended to explain his reasoning too thoroughly, making slightly different points that were really the same. The overall effect was similar, perhaps, to the discussions taking place in his traditional doctrinal classes, where the analysis builds slowly over the course of the hour until the answer is finally revealed, by the professor, at the end.

In written comments on his first, short pieces, I explained that he needed to work on the pace of his writing, to deliver his analysis more directly and concisely. But those comments did not seem to help, and his first draft of a research memo exhibited the same problems. I tried to provide more specific comments this time around, explaining that he would communicate his ideas more easily to the reader if he would put his conclusions up front, and then prove them, and if he would cut out or combine repetitive points of analysis.

These comments encapsulated my only major concern with his writing, and I expected him to focus on them in his conference. Instead, he directed our discussion to other, minor concerns, pointedly avoiding those comments. His obvious reluctance to discuss my major concerns puzzled me. I viewed the “pace” issue as an easy and noncontroversial one, a simple, practical suggestion about how to write the way that lawyers want to read. If he understood the comments, the problem would be easy to fix and would dramatically improve his legal writing.

Near the end of the conference, as he started to skirt around the issue, I finally realized why he was hesitant to discuss it; he was defensive. He understood my comments perfectly, but he had rejected them. He explained that making the changes I suggested would lessen the persuasive impact of his analysis. He viewed his “build up to

the punch-line” approach as an intrinsic characteristic of his “writing style,” a characteristic that made his argument more persuasive, adding value to his writing that I simply did not seem to understand.

Immersed in my real-world orientation, a world in which virtually all the legal writers I was familiar with, at least all of those whom I considered effective, approached their legal writing in the way I was suggesting, I had not even considered the possibility that he would take these comments about his pace as a personal criticism.

Sitting across the table from him, I now saw that he did not view my comments, as I did, as practical suggestions, but instead heard them as criticisms of his general writing style, that amorphous concept that students seem to think of as some inborn, unchangeable way of writing, naturally flowing from one’s brain to one’s pen, separating the people who can naturally write well from those who cannot.

Mostly, I felt embarrassed. My comments had given him the impression that I disliked his style. By characterizing the problem as one relating to the pace of his writing, and by telling him that he would communicate more effectively if he followed my suggestions, I suggested his way of writing failed to effectively communicate his logical thoughts.

In reality, there was no such problem with his writing style. His writing was pleasant and easy to read, and his build-up-to-the-punch-line approach communicated the same information that I wanted him to communicate. I just wanted him to state his conclusions first and then prove them, simply and concisely.

Why? If his approach communicated his logic effectively, why was I insisting that he change it? The problem, I realized, was not with his writing; it was with his readers. His readers were not the ones he seemed to have in mind. He was thinking of the sort of readers I remembered from my undergraduate studies, readers who were critical and sharp-minded, but also patient, and interested in understanding the way that a writer thinks about a problem rather than immediately dissecting the problem through the reader’s own eyes. Readers who will come along for a leisurely ride on the writer’s train of thought.

These were not the readers I was familiar with from law practice. The legal readers I had in mind are impatient and rabidly critical. They are not much interested in understanding the way a writer thinks but instead only in what the writer thinks, and why, so that they can decide whether they agree or disagree, as quickly as possible.

This epiphany made my job a lot easier. I stopped talking about my student’s writing style and started talking about his audience. I explained that in my experience most legal readers do not enjoy the carefully crafted, slow-building development of a writer’s ideas. Instead, they want to start judging the writer’s conclusions, right from the beginning. They see such judgment, in fact, as the entire goal of reading. So, they want to hear the writer’s conclusions right off the bat, and then hear the reasons why the writer thinks those conclusions are correct. In fact, they usually spend their reading time picking apart the writer’s analysis in the back of their minds.

This simple change in approach did the trick. He got it. Almost immediately, he stopped worrying about whether his writing style was good enough. He revised his draft, and it was terrific, from my legal-reader’s point of view.

I had another such experience while working during the second semester. This time, I was working with a student who was able to zero in on effective, persuasive reasons to support one point of view or another in class discussions and in one-on-one conversations, but who struggled with basic writing skills, and failed to present written arguments in the sort of logical framework her future audience would expect. She used rules of law as support, which she would draw on occasionally during the course of her argument, sort of as side notes—rather than using the rules themselves as structures around which to craft her argument.

I had offered extensive comments on this student’s first draft of a brief and additional comments on supplemental drafts she asked me to review. Though my written comments explained exactly what I thought she needed to do—for example, identifying the rule of law that she needed to begin with, and identifying the thesis statements that did appear in her analysis—they seemed to provide little help, and she was not making much progress.

“I explained that in my experience most legal readers do not enjoy the carefully crafted, slow-building development of a writer’s ideas.”

“I focused on the way a legal reader approaches reading: as an exercise in criticizing someone else’s argument.”

Again, we had a breakthrough in conference. After almost half an hour of talking about particular problem areas in her draft, and of her inability to understand some of my comments, and the ways in which she thought she had responded to them, in short, getting caught up in the minutiae of her writing, I realized that she was not really hearing me. We were talking past each other. I was telling her that her reader wanted to hear her conclusions up front, and then, in a logical, almost mathematical order, the sub-points supporting those conclusions. She was telling me that she was giving the reader all of that, pointing to the places where she had, indeed, written her thoughts on the paper (just not in the order I wanted).

I closed her paper and started talking about lawyers, rather than about her writing. I focused on the way a legal reader approaches reading: as an exercise in criticizing someone else’s argument. I explained that the legal reader prefers to hear the conclusions up front because this makes it easier to start criticizing the writer’s thoughts right away.

I could see a spark of recognition in her eyes. She said that she was sure her professor last semester had tried to tell her this too, but that only now was it making sense. We immediately worked on one of her paragraphs right there in the conference, and she improved it more than she had in the previous hours and days of line-by-line rewriting and editing. Later in the week, she brought in another revision, which showed similar improvement. This one short conversation about what legal readers expect had a greater impact on her writing than did hours and hours of focus on the particular words and sentences she wrote.

I recognize that, as Kathryn M. Stanchi has pointed out, by guiding students to conform their writing style to their audience’s expectations in this way, I choose “to ease the students’ entry into the [legal] community, not to challenge the customs or culture of the community.”¹ I have yet to discover an effective way to appropriately challenge the

customs or culture of the legal writing community within my first-year writing course, although I have occasionally discussed such issues with individual students. I believe, though, that I better prepare my students to think critically about the traditional conventions of legal writing when I accurately frame my criticisms as based upon the expectations of the legal audience, and not upon a belief that the legal audience’s expectations represent an intrinsically superior form of communication.

I still struggle to maintain a balance between keeping my practice-based orientation and really understanding how my students see the task of legal writing. When I find myself couching my comments in terms of the “effectiveness” of a student’s writing, I realize I am falling back into the mind-set that the conventional, familiar approach to legal writing is the only way to communicate ideas “effectively.” Remembering these first-year experiences helps get me back on track.

© 2004 Jessica E. Price

¹ Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 Dick. L. Rev. 7, 22 (1998).