

# Know Thy Reader: Writing for the Legal Audience

By Bryan A. Garner

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**S**ometimes a legal writer will say to me, “You have to know your reader.” It's so true that it's a truism. And like many truisms, it's often misunderstood. That is, some writers seem to believe that individual readers have a vast disparity of readerly characteristics, when in fact they're generally much like one another, and much like you and me—on a bad day.

What can we safely say, in general terms, about legal readers? Three characteristics come to the fore: (1) They're frightfully busy and therefore impatient. (2) They're hopeful for something useful in their work, but they're easily disappointed. (3) They're professionally skeptical and, by nature, uncharitable. They're skeptical because they've been trained to think of contrary views, and they know the argumentative strategies for doing so. They're uncharitable because they

believe that accuracy with pertinent details typifies accuracy in other matters—that if the details aren't right, there's little reason to think that the larger points will be right.

Overshadowing all other characteristics is their inescapable busyness. It matters not whether you're writing for a judge whom you're hoping to persuade or a supervising lawyer whom you're trying to help. Your reader is harried, with too much to do in too little time. Your task as a writer might therefore seem hopeless. But it isn't. You must use this unavoidable reality to gain some mastery of the writer-reader relationship. A sound understanding of legal readers can help you achieve that.

## Characteristic #1: Your reader is frightfully busy and therefore impatient.

With prestige in everyday life come demands on one's time. Important people are *busy*, and the more important, the busier. That's an inevitable fact of life, and one that Justice Clarence Thomas well understood when he was writing briefs full-time. Here's what he told me in an interview: “When I wrote briefs, I always assumed that judges had other, more important things to read than what I wrote.... People are *really* busy, and I wanted to make sure that the judge saw mine.” As a result, he learned to be brief and not to cram as many words on the page as possible. He said that his prefer-

ence today, as a reader, is to pick up a 20-page brief rather than the more typical 50-pager.

Hence brevity is part of what you must achieve. Likewise economy: you must capsule your message up front, without one wasted syllable, even if the rest of the writing goes on for many pages. If it's a five-page motion, state the essential message concretely in the first paragraph. If it's a 25-page memo, distill the message on page one, without abstraction. The rest serves as backup.

Consider an example—a reply brief on a motion to dismiss. A time-wasting version not written from the reader's point of view might open like this: “Now comes Defendant Avogen Casinos, Inc. (‘Avogen’), by and through its attorneys of record, Hall & Richards, 300 Main Street, Suite 280, Miami, Florida 33101, and files this its Reply to Gibson's Response to Avogen's Motion to Dismiss, and respectfully states unto this Honorable Court as follows.” That last part purports to be courteous, but in fact the whole thing is discourteous. It's as if the writer is shouting, “Skip this!”

A version that accounts for the reader might begin with a straightforward title: “Avogen's Reply to Gibson's Response to Motion to Dismiss.” Then, immediately after, a fast start: “The fatal flaw pervading Gibson's arguments is that she cites and discusses specific-jurisdiction cases when this Court is undeniably presented with a



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general-jurisdiction issue. But before clarifying that muddlement, Avogen must briefly set the facts right.”

If you really know your readers, you'll start fast—without inefficient windups.

### Characteristic #2: Your readers are hopeful but fickle.

When they pick up what you've written, it's probably with a sense of eagerness—even hope—that it will show a strong command of ideas, a deft handling of the language, and argumentative rigor. That eagerness is easily dashed, and little instances of poor judgment on your part can cause the reader to turn on you. The chief causes of disappointment will be carelessness (typos, poor citation form); vagueness (airy assertions that aren't concretely supported, raising the suspicion that you don't really get it); the indiscriminate inclusion of facts, without distinguishing vital details from incidental ones; and needless repetition.

Here's the sobering fact: you can't hide. On page one, you show either that you've grasped what you're writing about or that you don't. And your reader will be sizing you up almost instantly. Unlike the law professors who question you Socratically, you can't hide the ball because there's no such thing as an effective hide-the-ball memo or hide-the-ball brief. In law practice, such things are simply incompetent—and your readers know it.

### Characteristic #3: Your readers are skeptical and uncharitable.

Your audience has been trained in the law. If you fail to address a critical point, they'll notice. They're likely to see what you've overlooked, so you must be really

thorough both in your approach to the problem and in your research. You must work through the complexities to arrive at a simple, elegant solution to the problem.

Your readers will instantly start sizing you up on many fronts: if you cite a case but forget to include in the citation the court that decided it or the year of the decision; if you fail to include a pinpoint citation; if you don't know how to handle an ellipsis; if you put “Inc.” after “Co.” (or, worse yet, “Company”) in a case name; if you don't know when to capitalize “court”; if you don't know that “irregardless” is not a word in good standing; or if you make other slip-ups—and the possibilities for error are amazingly many—they'll typically think less of you as a writer. And by extension as an advocate. (The errors mentioned here are easily mended by following the rules in *The Bluebook* and *The Redbook*.)

So there's a lot going on at once in your reader's mind. If you're a beginner uncomfortable with the niceties of legal writing, much of the reader's attention will be focused on you instead of your message—and on how much progress you still need to make and how best to convey that to you. If you're skillful, your reader's thoughts will be focused mainly on your message, and only after the piece is completed will the reader likely sigh and think about how deft your handling of the material was.

Sometimes it is said that your best strategy is to mimic the writing style of your readers. That may be true if you're writing for a consummate stylist—a rare situation for most. It may also be the cold reality, to some extent, if you're ghostwriting. But it certainly isn't true if you're writing for a judge. Almost everybody is more sophisticated as a reader than as a writer. Similarly, we're better in appreciating great talks, music recitals, and ballet performances than we are at delivering them ourselves. Most of us would

consider it laughable if a professional singer tried to mimic how we sing on the assumption that “that's what we must like.”

So your legal readers are impatient, fickle, and uncharitable. Writing for them is entirely different from writing for your mother, who would likely be cheering you on, beaming with pride, and asking you to read it aloud again. Your legal reader isn't your mother. Nor a kindhearted third-grade teacher. Nor a nurturing high-school teacher. Your legal readers are likely to be the most demanding ones you've ever had. ■

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