Playing to the Audience

David Spratt
American University Washington College of Law, dspratt@wcl.american.edu

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"All [people] are created equal." This timeless, sacred principle has been ingrained in us since elementary school. From an equal protection or due process standpoint, I ardently support and believe in this concept. In legal writing, however, each audience is different. Each reader brings something new to the table. Each reader has different biases, backgrounds, and perceptions, and each reader must be carefully considered before and when writing a document. As lawyers, we must play to each audience without a set script. Each reader responds uniquely to what we say, and not all audiences, at least in this sense of the word, are "equal."

In her Fall 2012 guest column, Heather Ridenour mentioned (without names) what my son's then-kindergarten teacher wrote on his report card: "He asks many questions to explore a variety of topics and tells stories with many details." This teacher sure knew how to play to her audience. Before writing her comment, she fully considered the effect that her words would have on their reader, i.e., the parents of a kindergartener. Many parents refuse to accept that their children have any negative traits, and the teacher recognized this point. Writing that my son talked a lot and took too long to tell a story (though true) would have alienated me, and I might have either ignored or failed to receive her message; instead, I complimented her on her mastery of persuasive language and knowing her audience.

All too often, lawyers fail to consider their audience, and in doing so, fail to write or speak as effectively as they otherwise could. In the age of hashtags and emoticons, law-trained writers eschew good legal writing and sometimes produce informal, sloppy, and unprofessional documents. To avoid this horrendous fate, ask yourself these questions about your audience before and during the writing process:
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1. Who is my reader?

What is the reader’s background and educational level? Am I writing to one person, such as a client or opposing counsel, or will multiple people be reading my document? With legal writing, there are almost always multiple, and sometimes unexpected audiences.

2. What is my reader’s relationship to me?

Is my reader an ally or an enemy? How well do I know my reader? These questions typically govern the level of formality that a writer will use. For example, if you are writing to a colleague in the same office, putting a smiley face next to your signature or using slang might be acceptable; this same informality would be frowned upon when writing to a client or opposing counsel.

3. How much does my reader know about the subject and my answer?

Does my reader understand legal terms of art or do I need to define or simplify my terms? Have I spoken or written to the reader before about the same or similar subjects? If so, less detail might be appropriate the second time around.

4. What is my reader’s attitude toward the subject and my answer?

Is the message being conveyed one that the reader will accept or reject? A reader responds differently when receiving good news and bad news. Different writing strategies are appropriate for each. For example, before presenting bad news to a client, it is often necessary to first “cushion the blow.”

Use these questions to plan and edit your writing. Once you have a sense of your audience, you will be better able to make certain decisions: a) How much of the law to explain; b) How many facts to provide to the reader; c) whether to use legal terms, with or without definitions and examples; and d) whether to discuss cases and if so, how much detail to include; e) whether to provide citations. Remembering the audience will result in a more reader-friendly and effective document.

Even when writing to similar audiences, however, remember that each reader is different. Resist the temptation to treat all similarly-situated audiences the same. Even the same reader might respond one way to a document in November and another way to a document in July. Be sure to re-evaluate audience. Do not assume that a particular reader will remain unchanged.

This year, my now first-grade son continued to talk in class more than he should have. At one point, his teacher emailed me this comment: “I am really trying to work within his natural talkative personality but it continues to be excessive.” Consider the audience. Enough said.

Questions, comments, and suggestions (but only if you first consider how I might react to them) are welcome at dspratt@wcl.american.edu.