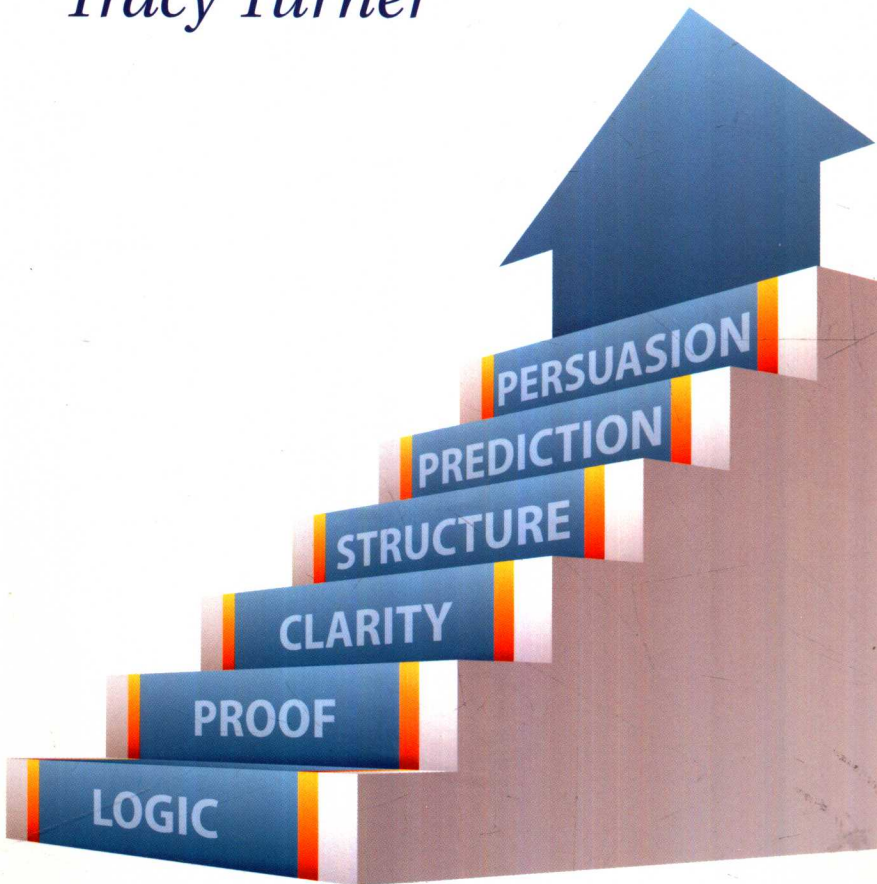


ASPEN COURSEBOOK SERIES

Legal Writing from the Ground Up

PROCESS, PRINCIPLES, AND POSSIBILITIES

Tracy Turner



Wolters Kluwer

ASPEN COURSEBOOK SERIES

LEGAL WRITING FROM THE GROUND UP

Process, Principles, and Possibilities

TRACY TURNER

*Director of Legal Analysis, Writing, and Skills
Southwestern Law School*



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To my husband and children for inspiring me to greet each day with enthusiasm and optimism.

To my legal writing colleagues at Southwestern for generously sharing the ideas that have shaped me as a teacher.

To the legal writing giants for teaching me how to teach.

PREFACE

The Goals of the Book

“What is in this package in my faculty mailbox? Another legal writing textbook.” Legal writing professors are excellent teachers and excellent writers. So, it is no surprise that we have a wealth of textbooks filling up our shelves. Each new book helps move along our evolving pedagogy and improve our ability to reach students. I hope this book makes its own contribution. I wrote it out of love for both my students and my legal writing colleagues around the country.

Specificity. This book is the result of my commitment to reach today's law students and arm them with the skills and mindset they will need to succeed as attorneys. When students first walk into my classroom, many have never faced an academically rigorous program that has challenged them to question and support their assumptions. I have learned that teaching students what to do is insufficient; they need to be shown how at a very basic and specific level. This book follows years of dissecting the processes of legal reasoning and writing for my students with increasing specificity. My goal has been to provide students with something more than, “You need to prove this conclusion.” Instead, I offer them a step-by-step process for every topic from complex skills like legal reasoning to more mechanical tasks like citation. The book's pages are full of the helpful tips, strategies, warnings, encouragements, explanations, illustrations, and examples I have given to my students as they sit in my office or ask questions in class.

Awareness of Learning Styles. With the goal of providing specificity, I have tried to carefully balance the importance of readability. The Internet has made our students a demanding audience. They are used to finding answers quickly and in a variety of formats suitable to their individual learning processes. To meet their needs, I have designed the book in a visually pleasing, easy-to-read format and have incorporated a variety of teaching tools including full-text explanations for the verbal learner; charts, diagrams, illustrations, and annotated in-text samples for the visual learner; and integrated exercises and checklists for those who learn best by doing. I have also developed narrated PowerPoint presentations that complement the book for the auditory learner. And to appeal to all learning types, the text of the book is written in a personal, engaging, practical, and occasionally humorous tone that connects with today's law students.

Flexibility. The other risk of specificity is rigidity. In writing this book, I was always mindful of this risk. Writing is ultimately a creative, strategic, and personal endeavor that specific lessons can aid but not direct. I aim for an ideal balance between instruction and flexibility. Whenever possible, I include multiple options for achieving the overall goals of clear writing and logical reasoning. Moreover, because multiple options sometimes confuse rather than enlighten students, I also incorporate decision-making strategies to help them understand why and how each option works in a particular context.

Transferability. Finally, the book aims to create self-directed learners and to increase the transfer of knowledge by incorporating take-away learning tools like mindset toward feedback, critical reading techniques, checklists, charts, and diagrams.

The Organization of the Book

I strongly believe that the fundamentals of good legal writing are universal, regardless of the format of a particular document and even regardless of whether the document is objective or persuasive. The book's organization reflects this belief by devoting Part I to universal lessons regarding legal reasoning and writing. Part II then covers the specific format of the objective legal research memorandum, and Part III covers persuasive briefs. Moreover, because the lessons on persuasion are universal regardless of whether the brief is an appellate or a trial brief, universal lessons are again presented before the specific formats of trial and appellate briefs are covered. For example, persuasive facts sections, persuasive issue statements, and persuasive techniques in the argument section are covered in depth in the early chapters of Part III while formatting differences between appellate briefs and memoranda of points and authorities are covered in the last two chapters. Appendix B includes sample documents of legal research memoranda, appellate briefs, and trial briefs. Multiple samples are included to illustrate different organizational choices. Some samples are annotated while others are left without annotations so that the professor can use in-class exercises to help students dissect the samples on their own. Excerpts from the Appendix B samples are also integrated into the text of every chapter in the book so that students can both focus on the particular lesson covered by a chapter or section of the book and see the document as a whole in Appendix B. Finally, more complex chapters include self-tests with answers in the back of the book so that students can test their grasp of key concepts.

Adapting the Book to Different Programs and Teaching Styles

Selfishly, I wrote this book first for my own students. So, it is geared toward the structure of our legal writing program—predictive writing in the fall and then persuasive writing in the spring. However, because the book covers fundamentals in Part I before introducing the specific formats of predictive and persuasive writing, it adapts well to different structures. A program that teaches persuasive

writing first, for example, can cover Part I (universal fundamentals) and then skip over Part II (predictive writing) and move right into Part III (persuasive writing). Any cross-references in Part III refer the reader back to the Part I fundamentals rather than to Part II.

A Note on Chapter 6 (Organizational Paradigms)

Chapter 6 (Organizational Choices) is a unique aspect of the book that I feel I should take some time to explain. For the first few years that I taught legal writing, I stuck religiously to the CREAC format and instructed students to put all of the law on a particular issue or element before any of the application to the facts of the problem case. Chapter 6 labels this the TRRRAAAC format. However, I began to think that although this structure can be stretched to various hypotheticals, it is not always the best fit. I also came to believe that while CREAC was adequate for teaching predictive writing, it did not give students enough flexibility to write persuasively. Therefore, I spent a summer figuring out both how different textbooks teach legal writing and how (quality) legal writers in fact write. I looked both at the text of legal writing textbooks and at the samples they included. Chapter 6 reflects the different organizations that I either read explicitly in the textbooks or mapped out from reviewing the samples in the textbooks. In drafting Chapter 6, I aimed to adequately explain each organizational option through using an adaptation of the CRAC (or TRAC) paradigm along with annotated samples and to provide decision-making strategies to help students understand the strengths and weaknesses of each choice. When I teach Chapter 6, I usually cover only 6.1 (basic TRAC) and 6.2 (TRRRAAAC) for the first fall problem. I introduce 6.3 (Multiple TRAC Structures: TRRRAAAC by Heading) and 6.4.1 (TRARARAC) for the second fall problem. I save all of the remaining structures in Chapter 6 for the spring semester when we transition to persuasive writing. This incremental approach has worked well. I have many students who decide not to vary from TRRRAAAC. However, my stronger writers are willing and able to use the other structures effectively. My best briefs are better than they have ever been. Moreover, I believe that I have at least exposed every student to alternatives rather than suggesting that legal writing is a one-size-fits-all mechanical process.

Nonetheless, I recognize that members of the legal writing community have varied opinions on whether first-year students are ready to be taught flexibility in their writing, particularly with respect to organization. Therefore, I carefully separated different approaches into different section numbers so that professors can easily assign only the approaches they want their students to consider at any given time in the course.

Tracy Turner
December 2014

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