

Pam DeMartino:

Welcome to the Widener Wordsmith, a podcast series designed to enhance and supplement legal methods here at Widener University Commonwealth Law School. I am Pam DeMartino, an adjunct professor of legal methods and the host of this series. Joining me throughout this year will be attorneys from both academia and legal practice, who will provide listeners with advice and insight into the challenging process of legal writing.

Pam DeMartino:

Welcome back, 1Ls, to the second episode of the Widener Wordsmith podcast series. I'm Pam DeMartino, and today I'm joined by Professor John Dernbach, author of A Practical Guide to Legal Writing and Legal Method, one of your required textbooks for legal methods this year. Hello Professor, and thank you for participating in today's discussion of legal writing.

John Dernbach:

Thanks. I'm glad to be able to do this.

Pam DeMartino:

Yes, it's wonderful. I want to start our talk today by sharing with our listeners how I came to officially meet you. I met you somewhat informally the week prior to orientation week, when I spent some considerable amount of time with your textbook, looking over the assignments that were going to be reviewed in the course of the legal methods course. Then when I was told that my office was ready, I came into the law school and was walking down the hall, and dropped my things to open my door, and glanced across the hall, and there you were sitting at your desk, and I saw your nameplate.

Pam DeMartino:

I just thought, "Wait a minute. How do I know that name, John Dernbach?" It was sort of one of those eureka moments, when I realized, "My gosh, the guy who wrote this textbook that I'll be working with with my students all year is sitting right across the hall from me," and there you were. We were able to meet, and talk, and chat about your experience as a writer, and that's why I'm thrilled to have you today, because I'm hoping you'll be able to share some of that experience and insight with our listeners as well.

John Dernbach:

And I'll try and do that.

Pam DeMartino:

That's good. Well, let's start off with that point, and that is the textbook is one of the three that is assigned to first years as part of their legal methods course, and I'm hoping then, as we're talking through here, we can discuss, perhaps, its history. Might as well-

John Dernbach:

Sure.

Pam DeMartino:

... start off with how did it come about that you decided you're going to be a textbook writer?

John Dernbach:

By accident. That's actually the truth. I went to law school with the idea of doing environmental law, and that should be no secret to you or a lot of other folks.

Pam DeMartino:

Absolutely not.

John Dernbach:

I had a job lined up after law school, but it wasn't going to start until about a good solid year after I graduated from law school, after I graduated. In other words, the American Lung Association in Michigan had an idea of hiring a staff attorney to do clean air work, but they hadn't created the job yet, and they hadn't gone through the board approval process, and budgeting, and so forth to create that. So, I taught legal writing at Wayne State University Law School in Detroit for a year, right after I got out of law school.

John Dernbach:

What I found was that the materials that were available at the time weren't very helpful. As I recall, the writing materials that existed then fell into two different categories about legal writing. One, if you breathe the air long enough, you'll get it. Two, grammar for lawyers. Those particular approaches did not help me when I was grading papers, and I remember the first set of papers that I got. There was 55 students, three- or four-page memo, and the problems that I saw in the memo had very little to do with the way I had been... the materials that were in the books, that I was supposed to use.

John Dernbach:

So I started thinking about, also, how do you grade these papers, and I'd heard, of course, about 100 times, "You just throw them down the stairs," and all the silly things that people say about grading papers, and just the ones that go the farthest get the high grades, or maybe it's the ones that go the farthest get the low grades. You can go all sorts of ways with that, but I felt like I needed to grade with more integrity than that, so I started trying to figure out what I was grading for.

John Dernbach:

Then you say, "Well..." To myself, I said, "So, okay, I can tell the students to get organized, but what does that mean exactly?" After talking to a number of people, it seemed to me that organization meant about four different things: discussing each issue separately, discussing each sub-issue separately, describing the law before you apply it to the facts, and explaining your position before you explain other positions that you didn't agree with, and that you didn't take.

John Dernbach:

Well, when I had that, I had something I could grade with, but I didn't have that until I really started grading. So we had what you might describe as kind of an awkward moment when I handed the student papers back, because one, they didn't do very well, and two, I was using a lot of criteria that they hadn't seen before. And they had plenty of opportunity to get better over time, and most of them did, but

when the year ended, the absence of a really solid text bothered me a lot, and I got more engaged with the issue of how do you teach legal writing than I ever expected to.

John Dernbach:

One of the things that... One of the insights I got as I taught was that the use of examples and exercises was incredibly helpful to teaching. You can lecture forever, and you can lecture as effectively as you possibly can, but if you can't get the students to do the things you want them to do, then you haven't succeeded as a legal writing teacher.

John Dernbach:

So the original idea... We got a small grant from Wayne State University at the end of the school year, and the original idea was to create a set of exercises. What we found out right away when we started writing the exercises was that if you don't provide the students with some guidance about how they ought to answer the exercises, you're not really going to have an effective product.

Pam DeMartino:

Right.

John Dernbach:

What emerged from that was the teaching strategy that the book employs, or I'm sorry, the teaching strategy that that initial round of material and subsequently the book employs, which is you explain a particular principle, like discuss each issue separately.

Pam DeMartino:

Yes.

John Dernbach:

Okay? You explain why it matters. You show the students good and bad ways of answering a hypothetical question. Then you explain why one way is better than the other. Then you give exercises at the end, to enable the students to take what they've learned and to practice getting it right. So we got this material, and we put this sort of a prototype of the textbook together at the end of the summer. Then we thought, "Well, this is really interesting. I wonder if we could publish this."

John Dernbach:

So we went to the Wayne State law library, and we asked them for all the textbook publishers, and they said, "Well, here's a list of eight." They gave us these eight textbook publishers, so we wrote them all a letter. Every single one of them came back no, except one, and that was the Fred B. Rothman & Co. in Littleton, Colorado.

John Dernbach:

What happened there was that they didn't publish texts. If the librarians had known that, they wouldn't have given us Fred B. Rothman's address. If we had known they didn't publish texts, we wouldn't have sent them the letter. And in the middle of dictating a letter to us, saying, "We don't publish textbooks," Fred Rothman, the publisher of the company, president of the company, changed his mind.

Pam DeMartino:

Wow.

John Dernbach:

So, we wound up publishing the text with him, with that company, small company, in 1981. Now-

Pam DeMartino:

So they took a risk?

John Dernbach:

They took a risk. They were mostly a library services company, and they had never published a text before. Now, what happened then was that that text got to be the bestselling legal writing book in the country by the end of the 1980s. And it did that, I think, because it, as friends of mine who have been career legal writing people have pointed out, it did some things that hadn't been done before.

John Dernbach:

It blended legal writing and legal method, which had not been really... Those two things had not been combined before. It broke down the pieces of legal writing into separate, discrete steps, explained each of them, as I just mentioned a few minutes ago, and used a building block approach, so that within a fairly short period of time, you can take a student from not understanding any of this to writing a fairly effective piece of legal writing. That's what we did, and we did it when we were really young, and it-

Pam DeMartino:

Just starting out with your careers.

John Dernbach:

Just starting out with our careers, yeah. I got my first copy of the book about the time of my 28th birthday. And I think there's some value, actually, in your 20s, of not knowing that something can't be done.

Pam DeMartino:

So you weren't deterred?

John Dernbach:

No. I wasn't deterred by how it can't be done. That didn't... You know. Because we had an idea about how to do this, and we did it.

Pam DeMartino:

That was the first edition.

John Dernbach:

That was the first edition.

Pam DeMartino:

And the copy of the text that the students have now been assigned is the sixth edition.

John Dernbach:

Right.

Pam DeMartino:

How did that evolve now, over the course of these years? Because you're no longer a professor of legal methods.

John Dernbach:

No, I taught legal methods, legal writing, at Wayne State. I've taught it here, but I don't primarily teach legal writing. So the strategy that we've employed for the... And Rich Singleton, by the way, is a partner at Blank Rome in New York, so you know, we're not career legal writing people, but Rich, by the way, was a colleague at Wayne State, so we started out together-

Pam DeMartino:

Together.

John Dernbach:

But in any event, what we've done is we brought people who teach legal writing into the process, so we have Katherine Wasson, that's been with the book for a while, and before her, Kathy Worton and Joanne Rotenberg, so for the last several have involved those folks, and now with the seventh edition, which we just started work on last week, we're going to bring Amanda Sholtis into the project. So-

Pam DeMartino:

For our students to realize, that's another one of our faculty members here-

John Dernbach:

Right, for another one of our faculty.

Pam DeMartino:

Yes.

John Dernbach:

And Amanda's smart, hardworking, very creative, and I'm looking forward to having her participate in that. But the core of the book is a student-centered approach to legal writing.

Pam DeMartino:

Yes, it is.

John Dernbach:

We don't start with the idea that what we have to say is the most important thing of all. What we start with is some understanding, based on quite a lot of experience shared among all of us, that teaching legal writing in little pieces is important, that explaining every single step is important, that showing

people what to do is important, in advance, giving them opportunities to test their skills, and then doing it over and over again, the importance of practice. All those things, I think make it a student-centered book.

Pam DeMartino:

Well, and it also exemplifies the writing process itself, that the writing is not once and done. It's not linear. We learned that it's recursive, and it requires drafts. It requires evaluation, and revision, and-

John Dernbach:

And one of the hardest things when you're starting out in writing, especially in law school, is recognizing that it's harder than it looks. It's not any different than what you see if you watch any kind of sports, if you watch any kind of music, if you watch anybody do anything well. Those people, male or female, athletes, musicians, whomever, all make it look easier than it really is.

John Dernbach:

And the idea here, I think, in legal writing, and in learning legal writing, and in entering that space, if you will, is to recognize that like anything else, it's hard at first. It's not all that much fun at first, and as you... And you need to put in a lot of time and effort to get better at it. But as you get better at it, it becomes more fun, and-

Pam DeMartino:

Well, it allows for more creativity on the part of the writer.

John Dernbach:

And that too, yeah. And that. And as you get better at it, the exercise of your skills is something that is something that you come to look forward to.

Pam DeMartino:

As students are picking up their syllabuses, and starting to realize, then, they have assignments already, perhaps you could share some insight on how they should approach their chapter reading. For instance, my experience last year was that certain students, because of their experience from college, they treated it as sort of a narrative textbook, where I would just read through chapter seven, highlight some idea, and then move on, and then just read the next chapter and move on. I don't believe the model, as you're discussing on the writing instruction, lends itself to reading this book in that fashion.

John Dernbach:

No, this is a how-to book. It's straight-up a how-to book, and if you don't recognize that right away, then it's going to be a lot harder. Learning law, and learning legal writing, is a whole lot more like learning math, or science, or any other class where you have to apply yourself. Frankly, driver's education and keyboarding are reasonable analogs here. If you have memorized the text, but you cannot do it, then you do not know it.

Pam DeMartino:

Now I get it.

John Dernbach:

So, the point I was making a few minutes ago, about the importance of practice, is not a small thing. It's a big thing, and what part of the difficulty with in teaching law school is that... and certainly in being in law school for some undergraduate... for some people with a certain undergraduate background, is that there is a certain set of habits that have to be unlearned.

John Dernbach:

One that I tell my property students is, and I would say in legal writing as well, is if you leave the assignment, if you leave learning this stuff to the night before the paper is due or the night before the exam, you won't be here anymore. What you need to do, what you really need to do, is keep working at it, and practicing, because like anything else, even driving and keyboarding, you don't get this stuff automatically. It doesn't come naturally, and it takes time to learn it. And the only way you can really master this stuff is just to keep practicing, so doing the exercises, figuring out what other students have done on the exercises, and figuring out what you did well on the exercises and didn't do well on the exercises, all of that is really important.

John Dernbach:

The sooner, I would say to the students who are listening, the sooner you do that, the better off you're going to be. The longer you prolong that, the longer you're going to prolong real learning, and by real learning, I mean learning that enables you to actually do what is being taught, whether it's a legal memo, or a judicial opinion, or a brief of some kind. You can't do any of this if you haven't really learned the material.

Pam DeMartino:

And as you said, along the way, in the small, focused learning segments, and particularly the segments that you have in the book where you give examples of a strong piece of writing, something that they should work towards, but then the also giving them a weaker example, and inviting them to really examine them, to figure out why. Why would this one piece of writing garner a higher score? If it's all about the grade, then why am I going to get more points for this type of writing than I am the other? I found that very helpful in the chapters last year, of modeling more than just, "Here, this is what's exemplar," but giving somewhat the weaker pieces, so that they can start to identify and evaluate that themselves.

John Dernbach:

Well, and yeah, and I think that's important precisely for the reason that you've described. It's one thing to say, "This is good legal writing." It's another to contrast that with bad legal writing, so people understand that. And the critical thing here is the endpoint. There are two endpoints that the book is directed toward. One is just basic competence in writing the kinds of documents that are contained in the book, all right? The second endpoint is documents that the reader can actually understand without a lot of difficulty.

John Dernbach:

One of the things that students and lawyers need to be mindful of is that the people who read the documents that you write as a lawyer are busy people. They've got a lot going on in their lives. They

don't necessarily regard you or your work product as the most important thing that they're going to be doing that particular day-

Pam DeMartino:

So true.

John Dernbach:

And they don't... Or they're not particularly friendly to having to work really, really hard to figure out what you mean. So the orientation of the book is toward writing documents that are no more complex than the material itself, and that do not contain a lot of artificial barriers to understanding, like lofty, highfalutin legalese, long sentences, convoluted analysis, and that sort of thing. We're looking to help students write documents that will actually achieve results on behalf of their clients, precisely because they're easy to understand.

Pam DeMartino:

Well, let me digress somewhat here then. In addition to the Practical Guide to Legal Writing and Legal Method, we also have another book in the stacks here at the library, and available to our students, Writing Essay Exams to Succeed in Law School.

John Dernbach:

Yes, and I would not have written that, and could not have written it in that way, if I had not first taught legal writing. What happened not too long after I arrived here, I was... I taught at Wayne State for a year, worked for this environmental group for about a year and a half, and then started working at the Pennsylvania Department of Environmental Resources, as it was then called, for about a dozen years, little more than, before I came here.

John Dernbach:

When I came here, then Dean Gedid asked me to teach property, which I was happy to do. But he also... I'm sorry, but what happened as soon as I started teaching legal writing, or started teaching property, I began to think about, "Well, how am I going to evaluate the students?" It's one thing to teach adverse possession, or gifts, or whatever it happens to be, to teach the cases involving that. It's quite another to figure out how to teach them how to write the exam on which their grade will be based, and on which much of their future depends, and it began to-

Pam DeMartino:

Sort of the same conundrum that you had earlier.

John Dernbach:

It's the same conundrum, and what I learned in teaching legal writing is that the process you employ is you show the students what you want, you explain it in great detail, you evaluate them based on that, and that's the approach that you take. You don't evaluate them based on something that is entirely new or different, or even partly new and different from what they've already heard and seen. So, I wrote a two-page memo on exams which turned into a 20-odd page handout, and students started coming to me and saying, "You know, I passed the Bar exam because of this. My grades got better because of this," and I thought, "Okay."

Pam DeMartino:

You're onto something.

John Dernbach:

Yeah, exactly. "Maybe it's time to see if I can prepare a short book," so that was the point of the exam writing book. And I have to say that what keeps me going on the exam book is not that I keep wanting to do additional new editions of it. It's that the feedback I get from the students is really quite extraordinary. That's why I keep at this. When I was in law school, the great mystery was how you write exams. There was no book that said, in any-

Pam DeMartino:

There was not. I would agree.

John Dernbach:

Yeah, there was nothing. So when you wrote an exam, I mean, the best advice I got was from second- and third-year law students in the hallways at law school, and I don't think that's a fair way to teach this material.

Pam DeMartino:

Not very effective.

John Dernbach:

I don't think that's the right way to set people up for the rest of their lives in terms of their legal careers.

Pam DeMartino:

So we'll let our first years know, although it's not required of their legal methods class, I highly recommend that they take a look at this particular publication. Again, it was Writing Essay Exams to Succeed in Law School and Beyond.

John Dernbach:

Yeah, And Beyond.

Pam DeMartino:

Law School and Beyond. Well, Professor, I apologize, but we have come towards the end of our session, and I'm wondering, do you have any closing remarks or parting pieces of advice that you would like to share with our first-year students?

John Dernbach:

Seize the day. This is a challenging experience for everybody. Even the people who do well here are deeply challenged, and it's a lot of work, but if you work hard, if you pay attention to what you're told, if you make corrections, as you will need to do constantly, you can do quite well here in terms of setting yourself up for a legal career.

John Dernbach:

There was a young woman in my legal writing class the first year I taught here, and she was in my office one day, and she was really upset. She says, "You know, there's this other guy, Matt, and he is so smart, and he just does so much better than I do, and it's just not fair." I said, "Look, just keep doing what you're doing. Keep working at this." I reminded her of the story of The Little Engine That Could, which is still a good story. I saw her a couple of weeks ago. She was with her daughter and a cousin of her daughter's. She is a prosecutor now.

Pam DeMartino:

Oh, how wonderful.

John Dernbach:

For a local DA's office. She has an exceptional track record, and she's doing very well, thank you.

Pam DeMartino:

Yes.

John Dernbach:

This is someone who had deep doubts in law school, about whether she would succeed, and she dealt with that by simply working hard and doing the best that she can. All you can do is the best that you can.

Pam DeMartino:

And for many, it's certainly enough.

John Dernbach:

It's certainly enough.

Pam DeMartino:

Well again, I thank you for your time in joining me today, and sharing the wealth of your experience here with the writing and the publication of your book, and I look forward to speaking with you again.

John Dernbach:

And I look forward to talking to you again, and frankly, if any of the students want to talk to me, I'm happy to do that.

Pam DeMartino:

I'm so glad you said something, because I'm hoping that I can invite them to contact you through your-

John Dernbach:

Sure.

Pam DeMartino:

... school email address.

John Dernbach:

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Yeah.

Pam DeMartino:

Stop by your office. I want them to realize, you are here, right? You are an author in residence.

John Dernbach:

Happy to do that. That's very kind. Thank you.

Pam DeMartino:

Thank you. This podcast series was made possible by a generous grant award from the Association of Legal Writing Directors and the collaborative and creative support of the legal methods faculty at Widener University Commonwealth Law School.

Outro:

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