

The Pen is Mightier... A Law Clerk's Perspective on Good Writing

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This is the first of a series of monthly columns the Young Lawyers Section will be publishing in The Advocate.

While a lawyer puts her public face forward in the courtroom, in reality, the attorney wins many battles on the written page. Law clerks stand on the front lines of these battles and are uniquely exposed to writing at its best and worst. In fact, to further the metaphor (and risk violating the suggestions found herein), because many clerks have jumped on the grenade of a clumsy and obscured argument—deciphering it so that the judge will know what the parties intended by the time hearing arrives—they are well aware of and immediately distinguish between poor and great writing.

From this perspective and in the spirit of improvement, this current law clerk offers the following advice for “sharpening” any attorney’s written “sword.”

THE “POST-MORTEM” OUTLINE

All good writers consider the overall structure and logical flow of their writing from the outset; excellent writers recognize that arguments will evolve as they are developed and plan to adjust accordingly. Outline at the outset, but check your finished product and re-outline as you conclude to ensure your developed argument remains coherent. This re-outlining process requires little time, restores perspective, and quickly indicates internal inconsistencies and irrelevancies that may have crept in.

Check Your Tone

Avoid passive voice at all costs—it slows the pace of your writing and cloaks its overall meaning. Also, ensure you have chosen the proper tone for the argument itself. Excessive repetition mutes your point. Most importantly, whatever water has passed under the proverbial bridge, snide or abusive comments toward the opposing party will win you no favor.

Do Not Fall in Love

Do not become such a proud parent of the words on the page that you cannot delete verbiage. Good writing is more golf than basketball—keep your word count low in order to succeed. And do not, under any circumstances, request leave to file a memorandum of length beyond that allowed under the local rules when simple editing would have brought you within the standard limits.

Question Everything! (and buy the book)

Good writers question everything and take nothing for granted because a moment’s research will prevent grammar mistakes from distracting the reader. Is it July 2006, or July, 2006? (July 2006 is correct.) Is the situation a “travesty” or a “tragedy”? (They’re not the same!) Does one “ensure” or “insure” the result? (“Ensure” means to make safe or guarantee; “insure” refers to buying insurance.) When should one use “that” or “which”? (“That” is used in restrictive clauses, meaning that the clause itself is necessary to understand the sentence. Use “which,” preceded by a comma,

when the clause merely adds information.) Am I moving “toward” or “towards” my conclusion? (Use “toward” if in the United States; “towards” is proper in the United Kingdom.)

And, of course, spell-check catches none of these errors.

A handy reference is a key to good writing. Some particularly helpful reference books include: *The Redbook: A Manual on Legal Style* by Bryan A. Garner; *The Elements of Style* by William Strunk, Jr. and E.B. White; *The New York Times Manual of Style and Usage* by Allan M. Siegal and William G. Connolly; *Eats, Shoots & Leaves* by Lynne Truss; and *Guide to Legal Writing Style* by Terri LeClerq.

Happy sharpening! (And don’t forget the judge’s courtesy copies!)

ABOUT THE AUTHOR

Hethe Clark received a B.A. from Duke University and his J.D. from Washington University in St. Louis in 2005. He was admitted to the Bar in 2005 and is currently serving as Law Clerk to the Honorable Darla Williamson, 4th Judicial District. He was Editor-in-Chief of Washington University Global Studies Law Review from 2004 to 2005.

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