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How Does Your Writing Stack Up?

Sixteen Things I Learned About Persuasive Writing

By Steven B. Katz

After many years, I have distilled sixteen truths about legal writing that I share with you now.

1. Legal Writing Is Legal Thinking

If you can't write it simply and clearly, you haven't thought it through yet. It is as simple as that. (*See* Rule #2.)

2. Keep It Simple

Live Strunk and White's greatest maxim: "Omit needless words." The same goes for arguments. If it's too complicated to write simply, you need to think it through more. Your entire argument may be complex, but each component should be simple, the structure that ties each component should be simple, and your language should be simple. Nothing is so complicated that it cannot be broken down into simple steps.

3. No Book Reports

Just because you found it in your research, doesn't mean it needs to be in your brief. If there is a point to working through the history of a rule—go ahead. But if there is none, history is for law review articles.

4. Save the Introductions for Networking

The heading "Introduction" just screams "stuff you don't really need to know, but I can't resist talking about." Instead, put a "Summary" at the top of your brief, and use it to summarize your entire argument.

5. Write the Summary First—and Last

The summary is the most important section of your brief. Until you are ready to write it, you are not really ready to write your argument. (*See* Rule #1.) But if you have thought through your argument sufficiently to write out a short, precise summary, you are ready to start.

After you have finished your brief, go back to the summary and make sure it is still a summary of the argument you made. If your thinking has evolved while writing (which is a good thing), make sure your summary reflects that.

6. Make Your TOC/TIC

Your Table of Contents should always Tie It Closed. The TOC is the summary of your summary (*See* Rule #4.) Your judge should be able to read just the TOC and have a good handle on your argument.

7. Tell 'Em What You're Going to Say, Say It, Then Tell 'Em What You Said

This is a classic of rhetoric. For a reason. Live by it.

8. Don't Forget Your ABCs

Always Be Connecting. As you write, every element should connect to the last one (or the next): grounds to results, section to section, paragraph to paragraph, often sentence to sentence. Keep the reader connected at all time to the superstructure of the argument. Your judge should never wonder, "Why I am reading this?" He or she should know.

9. Don't Be Passive-Aggressive

The passive voice inevitably wastes words and sounds weak. It is to be avoided. *No*—Avoid it.

10. Nouns Are Better Than Adjectives

Research shows that intelligent readers resist being told what to conclude. They prefer their own judgments. So, provide information (facts, rules) that leads to the right conclusion, and your judge will arrive there on his or her own.

11. Don't Get Mad; Get Even

The nastier your opponent gets, the nicer you should get. Don't respond in kind. Your opponent's bombast is a gift—accept it graciously. Judges *hate* unprofessional conduct. Standing above the fray pays dividends.

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12. Parties Have Names

Fed. R. App. Proc. 28(d): "[C]ounsel should minimize use of the terms 'appellant' and 'appellee.' To make briefs clear, counsel should use the parties' actual names…." Enough said.

13. Only Put in a Footnote What You Don't Need Your Judge to Read

Don't assume that anything in a footnote will get read. So, why bother with them at all? Because they are a great place for stuff that doesn't need to be read, like (a) points you don't really need to address but think your judge might want to see regardless, and (b) points you might need later, but are not essential to your current argument. But do not use footnotes to disclose difficult facts or law without thinking it through *very* carefully because, paradoxically, nothing calls more attention to a weak point than burying it in a footnote.

14. Don't Commit Senseless Acts of String-Citing

There are only three reasons to string-cite: (1) you need to show that a rule has been widely adopted across multiple courts whose holdings are merely persuasive as to one another; (2) you need to show a rule has been applied in varying factual settings; and (3) you need to chart the development of a rule over time. And you had better use parentheticals to make clear why you are string-citing. Otherwise, one recent, mandatory authority is sufficient.

15. Proofreading Matters

It's unfair; but it just does. Spelling, word choice, and typographical errors reflect negatively on you and can irritate your judge, pulling your judge's attention away from your argument and wasting precious time.

16. Wash, Rinse, Repeat

If you haven't gone through multiple drafts of a brief, then you simply haven't devoted enough effort to keeping it simple. (*See* Rule #2.) It's a cliché, but it's true: it takes a long time to write something short.