Ipse Dixit

How to Write Good

By Ed Walters

I thought that title would get your attention.

There are numerous references about proper legal writing. So what else is there to say? Well . . .

I am reminded of a brief I read back in 1979 in a case I had before the Louisiana Supreme Court. The issue was whether La. Civil Code art. 2317 applied. My opponent started his brief (he was a lion of the bar) suggesting that the "audacious nascence" of Article 2317 made its use suspect for some reason. Audacious Nascence?!? I had to run for the dictionary.

What does this tell the judge? It tells the judge you know how to use big words. Does it send the right message? Or, does it aggravate the judge who has to locate or access Google?

We want to be perceived as educated and smart, but does this accomplish the goal of persuading the court to adopt your theory of the case?

I asked some judge friends, and non-judge friends for examples of language we should not use in proper legal writing. Here goes.

Clearly. "Clearly" usually means unclear. It means you are unsure and are stretching it. If it was REALLY clear, you wouldn't have to say it was clear, but simply show the court how the law and the facts are on your side.

Defendant-in-Reconvention. What's wrong with using the name of the party? It's much easier to understand the case of Mr. Boudreaux when you refer to him by name and not "Plaintiff and Defendant-in-Reconvention." This is too impersonal and confusing in a multi-party case, particularly with intervenors.

Hereinafter Referred To. Put that in the trash bin along with witnesseth, whereat, heretofore notwithstanding, aforesaid, *inter alia*, *vel non, a fortiori.* Your job is to explain your position and persuade the court to adopt it, not to persuade the court that you know Latin.

Use Subheadings. Subheadings break up your brief into small pieces, curb the monotony and provide emphasis. This brief may (an d should) be read several times. Subheadings show the judge where to locate your support for an issue.

Fightin' Words. If you say your opponent's position is ridiculous, disingenuous, specious, laughable, absurd or frivolous, you are looking for those same words to be thrown back at you. Professionalism, anyone? I know, he started it, but judges HATE us verbally sniping back and forth.

Long Introductions. Avoid long introductions such as "Now comes Defendant and Plaintiff-in-Reconvention, by and through undersigned counsel, who hereby submits to the Court its Memorandum in Support of Plaintiff-in-Reconvention's Motion for Leave of Court to Amend Plaintiff-in-Reconvention's First Amending Petition-in-Reconvention." If you are paid by the word, this makes it obvious but aggravating.

Citation Form. Judges (and other lawyers) judge you based on your paperwork. If it is crisp, logical and well-supported, it says good things about you as a lawyer. What does it tell the judge when you cite a recent Louisiana case like this: Smith v. Jones, 659 So2d 500 (La. App 4th Cir. 2019)? It says you need to read Louisiana Supreme Court Rules, Part G,

General Administrative Rules, Section 8, Citation of Louisiana Appellate Court Decisions. Keep a copy on your desk.

Punctuation. I hate exclamation points and contractions in legal writing. If I need to use a semicolon, I rewrite the sentence. When in doubt, change it.

Long Pull Quotes. What do judges thinks when they see a long quote from a case, double-indented, single spaced and 6 inches long? "I have to wade through all of this to find one kernel of relevant language?" Make your pull quotes short and to the point, or, preferably, include the pertinent language in the text of your argument. If you MUST use a long pull quote, preface it by telling the court why this quote is important and necessary so it can be digested from a position of intelligence.

String Cites. It may be impressive (to you) that you can end a paragraph by citing a dozen cases you say support your position. Pick the one or two that are MOST relevant to the facts of your case (and always READ them before oral argument.)

Footnotes. In today's era of reading briefs on computers, laptops, tablets and phones, do you really think judges are going to leave the main screen, go to the end of the document, read the footnote and find her way back to the main screen? Put footnotes at the bottom of the page and make life easy for the judge.

Bolding, *italicizing*, underlining, ***or all three***, CAPITALIZATION, Larger fonts, tiny fonts to squeeze into the page limit, or **changing FONTS**. Embellish your argument with logic, policy, the facts and the law, not cheap font tricks.

You MUST Do . . . Judges don't like it when lawyers tell them what they MUST do. Instead suggest to the court the right thing to do based on the law and the evidence.

What They DO Read and DON'T Read. Several judges and law clerks said that the two of the most valuable parts of a brief are the Introduction and the Conclusion. Others say they don't see those parts as any more valuable than the rest. One source stated that the Standard of Review and Summary of the Argument are very important. The Standard of Review sets the court on the correct path for review: *de novo*, abuse of discretion, manifest error and the like. The Summary of the Argument is a great way to educate the judge and research attorneys of your theory of the case and what support you have for your position. It allows the court to read the brief intelligently with your theory in mind.

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