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## Good Editing Is Important, But Solid Preparation Is Key

Thorough research and analysis reduces work on the back end

By Kenneth F. Oettle

The editing process is a word puzzle, the pieces of which are denotations and connotations, tones, rhythms and word order. Good editors shuffle and shape these puzzle pieces until they mesh seamlessly to make a point. They refine the work until it says exactly what the writer means, clearly and compactly, and until they are sure that what is said is correct. A good editor can make writing sing.

Some say the “secret” of good legal writing is good editing. I disagree. Though editing is important — it can make the unclear clear and the dull vigorous — it cannot save a badly conceived piece. It is not a panacea for a poor approach. To the contrary, the possibility of salvaging weak writing through “editing” traps some lawyers into thinking that their haphazardly recorded thoughts constitute workable drafts.

Some litigators shoot first (type or dictate ideas as a purported draft) and ask questions later (like, “Is this a persuasive approach?” “Do I have facts to support this thesis?”). They don’t think the problem through because they are impatient or overworked or because they overvalue their gut instinct.

At the other end of the confidence spectrum, some lawyers are so afraid of “getting a zero” — having nothing to

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say — that they write prematurely just to get something down. Typical of this category is the isolated associate who has to write a brief in support of a marginal argument and has nobody with whom to brainstorm and nobody from whom to obtain more facts or new ideas for legal research. Both types of writers are out of touch with the true secret of legal writing — thorough preparation.

The backbone of a good brief develops long before the drafting, let



**MAKING  
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POINT**

A Guide to Persuasive Writing

alone the editing. It begins — not strangely — with the goal, the purpose for writing. If the goal is attainable (e.g., a well-grounded motion to dismiss or motion to compel), then the brief may persuade. If the goal is misguided (e.g., too ambitious), then the brief won’t persuade, whether well-written or not.

Assuming the goal makes sense, then the person assigned the task of writing the brief must understand the issue. Solving the wrong problem accomplishes nothing. Assigning attorneys know this, but they often fail to confirm that an assignment was correct-

ly received.

Even before the legal research begins, the facts should be “marshaled” (gathered, sorted, presented). Without all the facts, you don’t know how the scales of justice should tip (i.e., whether you should win and why), and you can’t analogize or distinguish case law very well, which is why assigning attorneys who ask associates to research “the law” but give them only skeletal facts might wish to rethink that approach.

After gathering and grouping the facts, you are ready to do what you were trained to do in law school — find and analyze cases and state the law. If you are resourceful, you will use other attorneys as sounding boards and sources for ideas, accomplishing much more at the hub of a network than you can on your own.

You will also outline your ideas, whether traditionally, with Roman numerals, or nontraditionally, with mini-paragraphs, lines, circles or the like. Outlining helps you order and group, which helps you create the logical thread.

At some point, you will “theme” the case. You will review your facts and your law — mostly your facts — and will determine why you should win, that is, why your client wears the white hat, or the other side wears the black. Your theme is the focal point of the case. If it is strong, you will probably win (talk about “secrets” of legal writing!).

A theme will be something like, “The defendant held back a crucial fact,” “The plaintiff could have negotiated for a liquidated damages clause but didn’t,” or “The defendant’s actions were the reason the plaintiff could not perform.” If the court is persuaded that

your client holds the high moral ground (has the best theme), and in some cases, if the court is comfortable that ruling for your client will not weaken the fabric of the law (hard cases make bad law), then you should win.

If you take all these steps before you create your first draft of a brief — that is, formulate a manageable task, marshal the facts, thoroughly research and analyze the legal issues, order your thoughts and theme the case — you will have less need later to move points and paragraphs around, scrap topic sentences and change your spin.

You can then put the editing process to its highest and best use — achieving clarity and punch by beginning powerfully, trimming unnecessary words, reiterating key facts, adding transitions, shaping sentences for emphasis and flow, choosing the right word and supplying internal summaries. Such changes make writing sharp and powerful. But without them, your writing can still be effective.

In contrast, if your goal is foolish, or if you fail to develop the facts, research and analyze the cases, order your ideas and adequately theme the case, then your writing will be ineffective no matter how assiduously you refine your prose.

Ultimately, thinking and writing are synergistic. Thinking is prerequisite to writing, and writing can aid thinking, as when the flaws in an argument don't become apparent until the argument is written. Though I prefer to test ideas in conversation, I may write an argument just to see how it looks. (Don't get jeal-

ous. I don't do it much. Writing is not so easy for me, nor do I have so much time, that I write points experimentally as one would dab paint on a pallet.)

If you write before you have finished gathering, grouping and thinking, don't view what you write as a draft. It is merely the manifestation of your preliminary thoughts. If you treat it as a draft, you'll do several times the editing to get it right, and you may not get it right at all.

## *Puzzler*

How would you tighten and sharpen the following sentence?

Lawyers need to be tenacious in the extraction of facts, and they need to be patient to wait for the information to emerge, thoughtful to ponder the problem and creative to find a theme that will resonate with the court.

Look for opportunities to group. Here, lawyers are performing essentially two functions — extracting facts and shaping a theme. The pondering is part of the shaping. For starters, link the four adjectives (tenacious, patient, thoughtful and creative) to the two sets (extracting facts and shaping a theme), two adjectives to a set. Tenacious and patient relate to extracting facts, and thoughtful and creative relate to shaping a theme.

Look to delete words that are implicit. For example, a person is thoughtful “to ponder the problem.”

Thus, “to ponder the problem” can be deleted. Similarly, a person is patient “to wait for the information to emerge,” so you can delete that phrase, too.

The “-ing” form (“extracting facts”) is shorter and generally better than the three-part combination of article (“the”), noun (“extraction”) and prepositional phrase (“of facts”).

For extra credit, “shape” rather than “find” a theme. Persons who shape are in control, which is where you wish to be. For additional extra credit, drop the concept of thoughtfulness to shorten the sentence and add punch. The concept is implicit.

I prefer the “to be” version here (“Lawyers need to be patient”) over the more active version (“Lawyers need patience”) because I like the rhythm and because the slow emergence of the thought using the passive verb reflects the deliberateness of the process. For the same reasons, I prefer “in extracting” rather than “to extract.”

I like “patient” before “tenacious” because of the sound and because it builds from the passive (patient) to the aggressive (tenacious).

The new version: Lawyers need to be patient and tenacious in extracting facts and creative in shaping a theme that will resonate with the court.

Alternate version: Lawyers need patience and tenacity in extracting facts and creativity in shaping a theme that will resonate with the court. ■