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When Editing Time Is Limited, Perform a Triage

Begin by confirming your purpose and your dominant point

By Kenneth F. Oettle

A reader asked how to prioritize editing tasks when time is short (or when money is short, which makes time short). The touchstone, as always, is persuasion. Address the elements that will have the greatest impact on the reader.

First, confirm your purpose. This may be easy — e.g., you seek to have a complaint dismissed — or not. Perhaps you want to advise a client that the defendant's settlement offer is inadequate but also warn the client that trial may bring no recovery at all. Be clear on your goal. To paraphrase Yogi Berra: If you don't know where you're going, you may not get there.

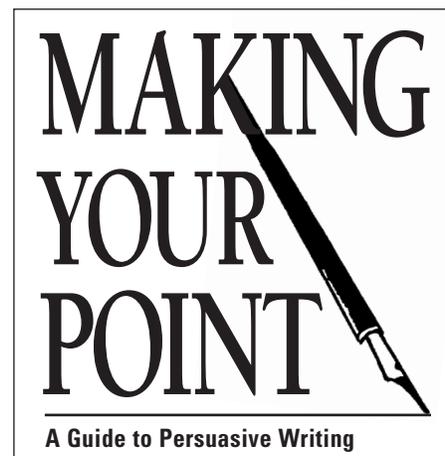
Next, make sure you have a theme — a dominant point that you can express in a sentence or two (e.g., "Plaintiff's claim must be rejected because he sat on his rights for three years."). Test your theme against elemental principles of morality, such as, "Keep your promises"; "Don't lie"; "Be careful"; "Be timely"; and "Don't be greedy." Put yourself in the reader's place. Does the result you advocate seem fair?

The suggestion that you put yourself in the reader's place isn't facile self-help advice, like telling someone to

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meditate who has never done it before. Identifying with the reader is a subset of "perspective taking" — the ability to see things from another's point of view. This ability is a kind of intelligence, and it is within every lawyer's skill set.

Once you are clear on your purpose and your theme, confirm that your theme has support. Do you have good facts? If not, you will lose. Facts rule. They are the basis on which the court decides how to balance the equities and



do the right thing.

Do you have law? Without law, you may lose if the balance of the equities isn't clear. Because results in other cases are largely equitable balancings, the absence of favorable law may cause the court to suspect that the balance should be struck against you.

Once you are confident in your theme, ask yourself if you have confronted the other side's best argument. You may already have done so in formulating your theme. If you haven't, do so now. Ultimately, the question is, "Whose dominant point is more domi-

nant?"

When you are confident in the strength of your theme, ask yourself if you have begun powerfully. In a brief, this means a strong preliminary statement. Get the reader on your side early so you benefit from the tendency of readers, like jurors, to reconcile additional information with their first impression. The reader will tend to interpret facts and cases as consistent with your theme if the writing was persuasive from the outset.

Starting strong also gives the reader confidence in your theme because you had the confidence to lead with it. Deep down, the reader wants you to take command and to make the reader's decision easy.

The impact of the preliminary statement was confirmed for me years ago when a senior partner said that my draft brief missed the point. I refocused the first paragraph of the preliminary statement and, knowing my reader, changed almost nothing else. He said the revised brief was "much stronger."

Because your theme is built around your best fact, your first sentence should, if possible, feature that fact. Forget about procedure ("This is a brief opposing summary judgment") and forget the intensifiers and the ad hominem attacks ("Without an iota of support in the facts or the law, plaintiff unjustifiably [outrageously, blatantly] blah blah blah"). Go with your best fact (e.g., "A plaintiff who doesn't recognize the duty to mitigate is looking for a free ride.>").

When you are confident that you have a clear purpose, a solid theme and a strong beginning, make sure the writ-

ing flows. Lather on the headings, sub-headings and bullets to break up the text, and make sure your logic is tight. Chances are, it isn't. Check your topic sentences. Any that seem awkward, or that aren't really topic sentences, may signal that you have lost the thread. Sentences within paragraphs should be in proper sequence.

At this point, if circumstances are exigent, you may have run out of time. But you must do one more thing — proofread. It won't make your point, but it will keep you from unmaking it. Because the court has to rely on you for the facts and the law, the court is sensitive to your integrity as an advocate. Lack of physical integrity (typos) suggests lack of intellectual integrity. Sloppiness undermines credibility.

If any time does remain, perform the following tasks, not necessarily in this order:

Reiterate your best facts. This is different from reiterating conclusions. Facts persuade; conclusions do not.

Continually guide the reader. Make everything clear, shifting back and forth from your perspective to the reader's. Always ask yourself what the reader needs to know. Introduce quotations; never punt with "As the court said." Use internal summaries. Keep your quotations short or highlight them with

underlining.

Shape your prose with parallel structure, active voice, strong sentence endings and precise words. Trim intensifiers, editorials and excessive words. Bring subjects and verbs close together.

Finally, check your punctuation or, if you can't punctuate, ask for help.

Even in a short time frame, have someone read the draft. Whether it is the first or fifth draft will depend on your tolerance for criticism, your wish to maintain an image as a good writer and your sense of when the help would do the most good. A fresh view is an asset.

You can sharpen your own "reader's perspective" by placing work aside. Even an hour away from a brief, memo or letter helps. Overnight is better. As time passes, the patterns in your mind weaken, and fresh patterns emerge. The fresh patterns are new ways to see your work, as if you were the reader.

Setting a draft aside and coming back to it is generally less productive than obtaining feedback from an enlightened reader. On the other hand, setting a draft aside and then reviewing it critically yourself may be more productive than giving the piece to an uncritical or unmotivated reader. Use your judgment.

The best way to handle a short time frame is to prepare for it. Be certain of your purpose and your theme. Confirm them in strategy conversations with other lawyers. Have your materials lined up and your ideas outlined so you don't have to sacrifice chunks of time for supplemental research or re-organizing the brief. If you are discomfited by the question "What should I edit in a short time frame?" you may not have fully prepared.

Puzzler

How would you tighten and sharpen the following sentence?

In reaching its conclusion, the court reasoned that plaintiff had instigated the events which led to his termination.

The first four words are a classic delete, just like the phrase "In its opinion" or "In his brief." All are implicit. At the end of the sentence, "which" should be "that."

The new version:

The court reasoned that plaintiff had instigated the events that led to his termination. ■