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Questions From Summer Associates

Strike the balance of time, effort, and expense in favor of good product

By Kenneth F. Oettle

Everything is a matter of balance, for example, eating (“Don’t starve yourself; don’t overindulge.”); exercise (“No pain, no gain; don’t injure yourself.”); and judgment — determine what factors weigh most heavily and then decide.

Summer associates ask about balances — how much to research; how much to edit; how to do a good job within time limits. This column, the first of two responding to summer associate questions, suggests how to strike some of the important balances.

Q & A

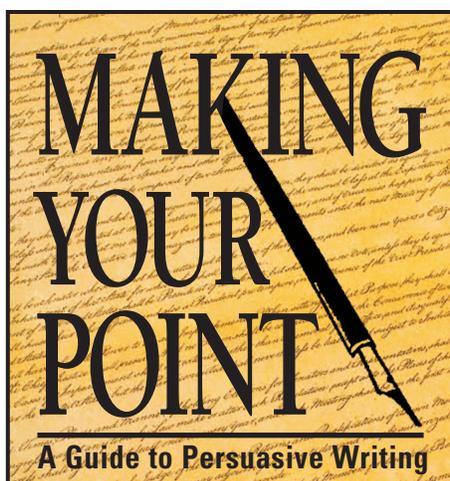
Q. I am concerned with my ability to produce a clear and understandable document while still meeting my deadline.

A. You are right to be concerned because your assignment involves sev-

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eral constituent tasks. After you take the assignment, you have to find enough material from which to formulate a point and support it. In law school, the body of case law is often preselected. In “real life,” it is not.

Your memo or brief is not just a mechanical report of what you have found. It has to pique the reader’s interest, hold the reader’s attention,



and, in a brief, persuade. Your paragraphs have to flow, as do your sentences. You need to use enough words, but not too many, and you need to choose the best ones. All this takes time, and you are working on a deadline.

One way to maximize the use of your time is to avoid having to back-track. Strive mightily to get the assignment correct. If you blow it, then a day or two goes down the drain. Think hard before you begin the research, and regularly step back for an overview.

Touch base with the assigning

attorney. Explain what you are finding and ask if you are on the right track. Create an outline — nothing fancy, just a guide. Order your thoughts before you write so you don’t have to shift sections and paragraphs later. None of the steps in the writing process is easy, and you can’t make them easy, but you can maximize the use of your time.

Q. When receiving an assignment, I often find that I am torn between paying attention to what the attorney is telling me and scrambling to write down all the pertinent information. Do you have any suggestions as to how to handle this conflict?

A. By all means take notes, but when you get lost, do two things: Ask the attorney to go over what you don’t understand, and offer to restate what you think you heard. Apologize for interrupting and explain that you wish to make sure you understand. At the end of the meeting, confirm the assignment by restating it.

Q. When I think I need to ask an attorney a question, how do I deal with my fear of looking stupid? I am concerned that I will ask a question that the attorney will think I should have been able to answer myself or, on the other hand, that I will fail to ask an important question because of this fear.

A. Better to look stupid than be stupid. True, assigning attorneys get annoyed if you don’t seem to be catching on (after all, why are they paying you so much if you can’t catch on?), and they may be slow to admit that they speak too fast and expect you to know more than you do. Nevertheless, they respect tenacity, and when you ultimately turn in a responsive, well-documented product, all, or almost all, will be forgiven.

Q. How do you balance research requirements against billing limitations?

A. Strike the balance in favor of good product. Though assigning attorneys worry that you will overwork the issue and necessitate a big fat write-off, they don't tolerate inadequate research, and they are not happy with an inconclusive, poorly articulated memo. Better to do the job well and take too long than submit inadequate work sooner.

To reduce your risk of being accused of either inefficiency or superficiality, keep your assigning attorney advised of how the research is proceeding. Explain where you are looking and what you are finding. Ask for ideas if necessary. By communicating, you offload some of the responsibility for striking the difficult balance.

You do place yourself at risk by communicating with a superior; that is, your questions may reveal ignorance, and your interim report may suggest that you don't research or analyze well, but the interaction tends to be more helpful than embarrassing. It's like a vaccination — it may hurt, but it will protect you.

Q. I can see the point of making sure that a memo is clear, but why should I bother to edit my work beyond that? How will I know when the law of diminishing returns sets in?

A. You never know for sure, and you don't always know when your memo is clear. Almost everything you write seems clear to you. You wouldn't have written it if it didn't.

You should probably edit more than you think is necessary. Chances are, you haven't read the draft from the

perspective of the reader, and you have left gaps. Even if the memo is more or less comprehensible, it would still benefit from a pruning. Wordy prose suggests inexperience, inattention and incomplete analysis.

When you have written a draft, ask yourself the questions below. If the answer to any of them is "no," then you are not done editing:

- Have I answered the question asked?

- Did I provide the answer up front?

- If the answer is likely to be painful, have I softened the blow, showing respect for the reader's expectations even as I convey the bad news?

- Did I shape the memo to respond to a reader who asked a question, or did I write it like a textbook, beginning not with what the reader needs or wants to know, but with the first tedious step in a soup-to-nuts recitation?

- Will the memo be clear to someone who is not as familiar with the material as I, or am I skipping steps that are implicit to me but probably not to the reader?

- Do I provide continual transitions, not only between paragraphs but also between sentences? In other words, does the memo flow? Will it be an easy "read"?

- Have I considered making passive constructions active (deleting, among other things, all "there is's" and "there are's")?

- Have I trimmed all the words I don't need? Edit for brevity on a sentence-by-sentence basis. Most analytical memos could stand to lose at least 15 percent of their weight through deletion or rephrasing.

When you can answer "yes" to all these questions, you can stop editing. If time and expense permit, edit some more. You will probably improve your work.

Puzzler

How would you tighten and sharpen the following sentence?

It is unclear whether plaintiff has standing.

Avoid using "it" without an antecedent. In other words, don't use "it" unless the pronoun refers to a noun, as in, "The complaint is long. It has 145 numbered paragraphs." Complaint is the antecedent of "it."

In the sample sentence, "It" is ambiguous. Until the reader picks up on the convention of the no-antecedent "it," the reader thinks, "What is unclear?" The reader looks for an antecedent because that is how the mind is hard-wired. In that fleeting moment of confusion, you lose touch with the reader.

You may ask, "If it's a convention, what is the problem?" The answer is that conventions rooted in and acceptable for speech (e.g., "there is" and "there are") may not be sharp enough for the printed page. Speakers can augment their presentation with tones, gestures, and pace, but writers cannot.

The revised version: Whether plaintiff has standing is unclear.

Alternate version: Plaintiff's standing is unclear. ■