How to Write
So Judges Will Like You

By Aaron G. McLeod

I know what you're thinking.

Another article on legal writing? Yawn. But before you turn the page, stay your hand. This isn't about what the author thinks you should do. This article will explain what you are doing right–and wrong–according to the bench. This is about what judges think.

Your author interviewed over a dozen judges, state and federal, trial and appellate, to learn their thoughts on legal writing and hear the advice they would offer to the lawyers who write to them. It was a fascinating exercise, and the results were telling: there was overwhelming agreement on nearly every issue. Space permits only a brief outline of those conversations, though, so we will begin by setting the frame with the single most important thing that judges said lawyers should do–and the worst mistake lawyers can make.

Contemplate the plight of your judicial reader. Life on the other side of the gavel is busy, filled with hearings and trials and conferences and 500 lawyers who all think their motion is an emergency that deserves immediate and undivided attention. The court wants to do the right thing, but only has so much time for any one case. So, when the day comes that the judge picks up your brief, what do you think he wants above all else to see?

More than half the judges said exactly the same thing about your brief:

quickly get to the point.

Judges don't know your case. They probably don't remember its facts or issues since the last time it was before them, and if they do, they still won't know it as well as you. When they pick up your motion for summary judgment or response in opposition, they don't want to spend precious moments reading legalese, unconnected facts and page-long standards of review (as if they've forgotten the standard for granting summary judgment). What they want to know is what relief you are asking for and why they should grant it. Narrow the focus of your brief, the judges say. Lead with your best argument. Tell the court what you want and why you deserve it. Tell them on the first page.

Believe it or not, there are still lawyers among us who begin a motion with, "Comes now [Full Name of Party] (hereinafter "Short Name of Party"), by and through undersigned counsel of record and files this its Motion for Whatever, and in support whereof respectfully submits unto the Court the following . . . ."

If that's you, stop it. Don't do it anymore. You've just wasted the judge's time because that kind of beginning tells him practically none of what he needs to know. The title of your motion is already on the page, and he probably expects that your client hired you to write it. Why don't you use that critical first sentence to tell the court why you should get what you're asking for? Consider how much better that opening could be: "Defendant is not due summary judgment for two reasons: (1) there is contradictory testimony as to when plaintiff first noticed damages and (2) defendant waived the laches defense by not pleading it in the answer."

In one sentence you have now told the court exactly what this document is going to do and why you win. When the court starts reading the facts that follow, it will have some context and a sense of direction. That kind of opening–the kind that gets to the point–is more effective because it is more persuasive. Immediately the court knows where it is and where it is going in your brief. You've used your words wisely, and have therefore done something to endear you to the judicial heart. You've made your brief shorter.

If brevity is so beautiful, you might think that excessive length is the cardinal sin. It's not. The nearly-unanimous opinion of the judges was that the most egregious error they see is dishonesty. Fudging the truth about what the law is, or what the facts are, will ruin your chances faster than anything else. This should hardly need saying in our learned profession, but the judges said it anyway. Tell the truth! The judges understand there is room for advocacy in describing what a case says or doesn't say. That's your job. Don't twist the holding of a case to suit your needs, though. And don't even think about misrepresenting the facts in the record. Judges hate that. They will doubt everything else you write if they catch you fibbing. Winning is never important enough to break this rule. After all, it's your reputation–and maybe your client's case–on the line.

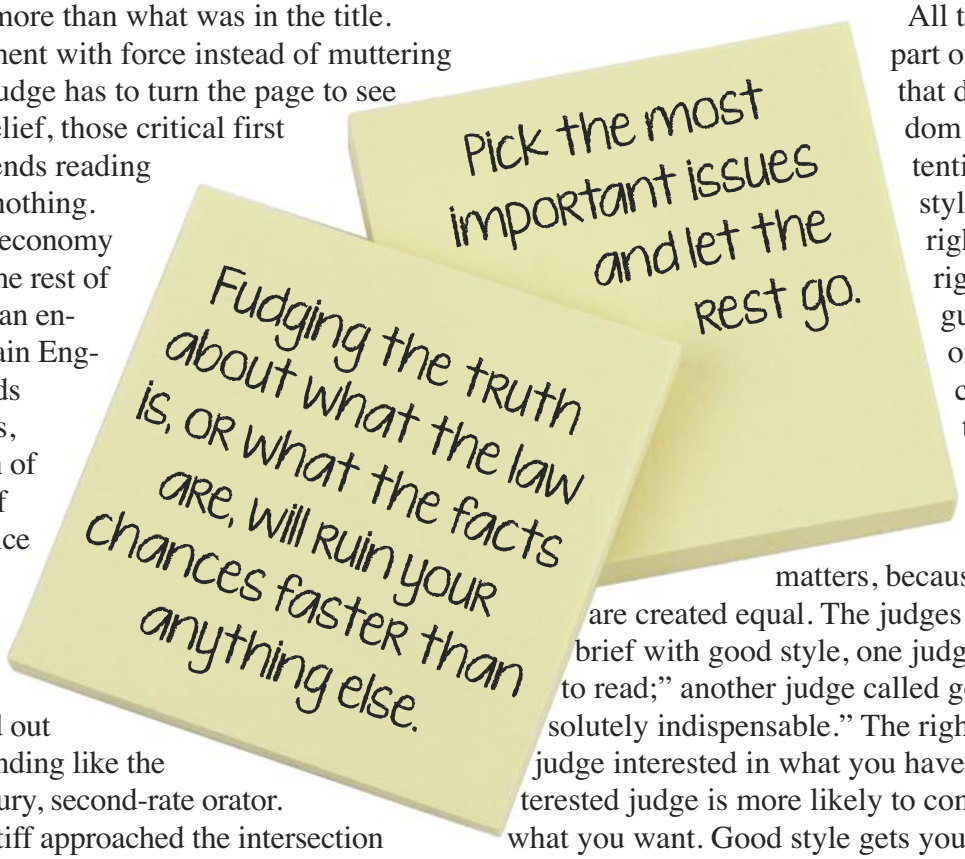
The runner-up for this position, though, is taking too long to say something. As one judge put it, make

their job "as easy as possible." Don't chase every rabbit. Focus your fire. Concede what you can. Pick the most important issues and let the rest go.

Lawyers have a hard time with this. We seem to grow more paranoid with age, more afraid that by leaving something out we will forego a winning argument or worse, fall prey on appeal to that dread beast "Waiver," but it must be done. Selecting what matters and what doesn't is the judgment lawyers are paid for. Aim to say more in less time on fewer pages than your adversary. Words are, after all, like currency. The more there are in circulation, the less each is worth.

How to achieve this goal of making every word bear its freight, every phrase tell your story? Being honest is easy enough (or should be); paring down your brief to its pure essentials without losing its flavor–that needs some explaining. The first point has already been made: don't waste precious time and space with an opening paragraph of drivel that tells the judge nothing more than what was in the title. Launch your argument with force instead of muttering in legalese. If the judge has to turn the page to see why you are due relief, those critical first few seconds he spends reading your work are for nothing.

That principle of economy applies equally to the rest of the brief, and you can enforce it by using plain English. Use short words instead of long ones, simple construction of sentences instead of complex, active voice in your verbs in place of passive. Write for the ear. Let your writing speak as you would out loud instead of sounding like the voice of a 19th-century, second-rate orator. Rather than, "Plaintiff approached the intersection at an excessive rate of speed and as a result was unable to avoid collision with the vehicle being driven by Defendant," try something like, "Plaintiff sped into the intersection and rammed Defendant's car." The second sounds more natural (and it's more fun to read).

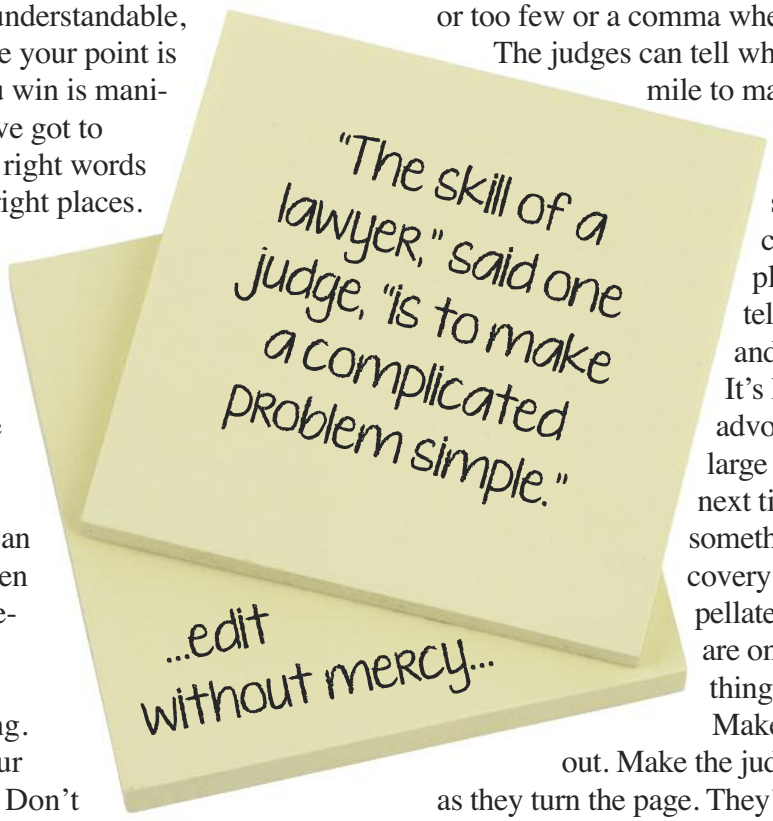


Eliminating needless facts from your brief is another way to keep the judge's focus. Stop over-particularizing your statement of facts by larding it with irrelevant dates and names and filings. You can hardly tell a good story if you overwhelm the reader with the full dates of every event you recount. Do you really need to tell the judge that plaintiff arrived somewhere "on June 14, 2009" when the precise date of that event is meaningless to your argument? Do you really need to list the full names of every person who attended a party if their identities have no bearing on your motion? Filling the brief with superfluous detail slows the judge down, distracts him and leaves him wondering what he's supposed to do with all this data. Cut your fact-telling down to what is essential to your argument and enough to tell the story of your case. A good cook doesn't reach for every spice in the cupboard to flavor a dish; he uses what it needs and leaves the rest alone. You should do likewise.

All these points are part of a larger issue that demands but seldom receives close attention: style. What is style? Simple–the right words in the right places. Language, someone once said, is not a conveyor belt, trundling along a cargo of words. How you say what you say matters, because not all words are created equal. The judges know this. A brief with good style, one judge said, "is a joy to read;" another judge called good style "absolutely indispensable." The right style keeps the judge interested in what you have to say, and an interested judge is more likely to consider giving you what you want. Good style gets your brief "more attention" from the court and, as one judge candidly admitted, can help you win.

So what stylistic virtue ranks highest in legal writing, which is almost always persuasive writing? According to the judges, it's clarity–clarity above all. As Strunk

and White warned us, when you have said something, make sure you have said it. "The chances of your having said it are only fair."[1] It is a humbling and highly educational experience to pick up something you've written recently and read the words that actually made it onto the page as against the way things sounded in your head. You may think you've communicated your point and connected all the dots in a way that makes your brief immediately understandable, but if you want to be sure your point is clear, that the reason you win is manifest on every page, you've got to spend time choosing the right words and putting them in the right places. Concrete nouns, active and colorful verbs, short words, frequent paragraphing–these are your friends and will make you beloved of the overworked judge. Style counts. As one appellate judge put it, good style can be the "difference between getting tackled at the one-foot line and getting a touchdown."



Oh, and one more thing. Once you've drafted your brief, stop. Don't file it. Don't email it to your secretary or boss or employee for them to read. You aren't finished, because now you must revise. You may be good, but good writing becomes great writing only when you edit without mercy, when you switch roles (in Bryan Garner's metaphor) from the carpenter framing arguments and building paragraphs to the dispassionate critic who strikes and prunes and trims and finds all the blunders. The judges appreciate the effort because they would rather you find the error than see it themselves. Sloppy editing, one judge said, makes her suspect sloppiness with the facts or the law, while another judge thought bad grammar and proofreading affected the credibility of the whole document. Several more judges identified bad proofreading as a pet peeve, and one federal judge called it "very distracting" and a more frequent problem than it should be.

You can score easy points by preventing these needless distractions. Edit that rough draft. Then edit it again. And again. And have someone else read it if possible, someone with no knowledge of the case. And when you've done that, break out the ultimate weapon in the editing arsenal–read your brief out loud (to yourself). Reading aloud will help you find the bumps in the prose, the places where there are too many words or too few or a comma where there should be a period. The judges can tell when you've gone the extra mile to make it easy on them. And they like it.

"The skill of a lawyer," said one judge, "is to make a complicated problem simple." Your writing is how you tell the court what you want and why you are due to get it. It's how you make your case and advocate for your client. It's a large part of how you win. So the next time you sit down to write something to a judge, from a discovery motion to a bet-the-farm appellate brief, remember that you are only one among many other things on the court's to-do list. Make your work product stand out. Make the judges breathe a sigh of relief as they turn the page. They've already told you how. ▲

Endnote

1. William Strunk Jr. & E.B. White, The Elements of Style 79 (4th ed. 2000).

Aaron G. McLeod

Aaron McLeod graduated *summa cum laude* from the University of Alabama School of Law. He joined Adams & Reese in 2008 and focuses his practice on appellate litigation. McLeod is also experienced in defending professional-malpractice cases. In addition, he has chaired the Alabama State Bar's Appellate-Practice Section and has served on the Steering Committee for the Eleventh Circuit Appellate Practice Institute.

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