

The Role of Legal Writing in a Lawyer's Practice

Write to Persuade

VIRTUALLY EVERYTHING THAT lawyers write should have a persuasive element. Lawyers write as part of their mandate, and a lawyer's mission is to gather up information, advise clients, and express the position of clients. This is equally true for in-house counsel, for counsel employed by public institutions, for solicitors chained to their desks, and for advocates pleading in the tribunals of their jurisdiction. Lawyers must have the skills to express what the client would have said if the client had legal training.

What does it take to persuade? Well, this depends upon the situation. A demand letter to a private individual is different than an explanation of the significance of a lengthy contract for intellectual property; a pleading is different than a research brief—you get the point. How you persuade depends upon your mandate and your audience. It depends upon who you are, why you write, and the circumstances in which you write.

Even when you record the notes of your call to a client or counsel, you want the record of your call to reflect your viewpoint (not just the facts or message as conveyed

by the other party to the call). Politicians are repeatedly told by their handlers, “Have a message. Stay on message.” In the same way, when you write, know what point you want to make, then make it. First, think. Then, write.

There is a great deal of overlap between oral and written advocacy. A pithy phrase does not lose its impact merely because it is in written form. Indeed, a well-crafted statement can be read repeatedly. Typically, the reader has the opportunity to read, absorb, and react to the written word at a pace suitable for the reader. Consider that the orator dictates the pace of play with voice, pitch, and speed. The writer, however, is subject to the pace dictated by the reader. The difference is not trivial.

What is Good Legal Writing?

FIRST, WHAT ARE the distinguishing features of good writing? Here are some of the outstanding characteristics:

- It is clear and concise.
- It is well organized, with a seamless flow.
- The issue is identified at the outset.
- It is interesting to read.
- It contains signposts for the reader.
- The style is suited to the audience.
- It uses proper grammar and punctuation.
- It provides an introduction and a conclusion.

What is Bad Legal Writing?

NOW, LOOK AT the opposite. What makes up bad writing?

- The issue not clearly identified. At its worst, the reader has no idea what the writer wants to say.
- It lacks order and organization. The reader becomes confused, or worse, stops reading altogether.
- In the case of longer documents, sub-headings are few or fail to guide the reader.
- There is an undue use of jargon and acronyms. These are either not explained or are only poorly explained.
- The style is dull, turgid, plodding.
- Ideas repeat, and turns of phrase are overused.
- Sentences and paragraphs are too long and complex.
- The document is replete with errors in grammar, punctuation, and style.
- Citations are improper and inconsistent.

The Benefits of Writing Well

WHY BOTHER TO master good writing skills? There are several reasons. These include:

- Good writing makes a good first impression. It reflects well on your client, your firm, and you.
- A well-crafted written argument reinforces oral advocacy.
- Cogent writing inspires confidence. It suggests that you are competent generally and the reader should trust your opinion.
- Ideally, you will persuade your audience of the merits of your position. A well-written piece will not be the cause of any failure to persuade.

- It may enable the audience to overlook substantive deficiencies in your position.

A lawyer's writing should announce to the world that the lawyer is a professional: the client who receives a document from the lawyer should be proud to have retained that lawyer; the opposing counsel who receives one should respect the lawyer who wrote it; and the judge who receives one should feel comfortable relying upon the lawyer's skill and integrity.