

How to Ruin Your Brief—Or, The Screwtape Lawyers

By Austin J. Hakes

To the Associates of Faust & Iscarriot:

You have probably heard by now that our firm has acquired a new client of considerable renown. I dare not write his name for reasons that should be obvious if you've had the pleasure of meeting him, but for the sake of dispelling rumor, let me say that the folklore about the horns and the tail and the red trident are sheer nonsense. Nor is he "in bulk as huge as whom the Fables name of monstrous size,"¹ but I think we all could tell that that was an exaggeration. Suffice it to say that he is well dressed and particularly charming.² I gather that many of you have known him for some time.

Our new client wishes us to give heightened attention to the form and substance of the appellate briefs we write and to make them as disastrous as possible. That's right—he wants us to write terrible briefs. This surprised me too at first, but then he explained his new litigation strategy: suspecting that it might be more effective to ruin judicial minds than to manipulate them in his favor, he wants to use terrible writing to drive appellate judges totally insane.

Writing a bad brief is easy enough, but writing a truly disastrous one—one capable of inducing madness—is a task requiring deliberate effort and careful study. Our

greatest challenge may be a lack of helpful reference materials, for although there are several good books on the art of writing well, the craft of writing badly has been suppressed and maligned for far too long.

In the hope of invigorating the persecuted art of infuriating prose, I offer this letter. It's a meager beginning, but if you follow these eight rules to the best of your ability, your writing should be sufficiently misguided and maddening to serve our client well.

Rule #1—When drafting, avoid feedback.

The problem with feedback is that "in abundance of counsellors there is victory."³ When you ask colleagues to review and edit your work, they will inevitably correct some careless mistakes, and they may even provide insightful suggestions about how to hone your arguments. This could prove disastrous to your goal of disaster.

To prevail (which, again, in your case means to fail catastrophically), cloister your work behind a moat of arrogance and insecurity. Tell yourself that you've thought of everything, but worry all the while that you haven't and that your colleagues would find out how imperfect you really are if they were to read your writing. Your work will suffer accordingly, to our client's great delight.

You must also do your best to thwart your own editing efforts. Rather than finishing a draft ahead of schedule and leaving time to return to it once your mind is fresh, you should begin your work shortly before you must submit it. You should also torture yourself by reading and rereading a draft as soon as you finish it. Your blurry eyes will search in vain for the mistakes that another reader would find in seconds, and the damage to your final product will be marvelous.

Finally, never make the egregious mistake of reading a book or taking a CLE course on how to improve your writing. These resources actually improve attorney skills and client outcomes, so avoid them zealously.

Rule #2—Let trial testimony determine the order in which you present the facts.

At the heart of every legal dispute is a clash of wills. Every lawsuit therefore has within it the seed of a human drama. You must crush that seed and keep it from growing into something interesting.

And in this you will surely succeed if you follow the practice of recounting the facts as they unfolded at trial or deposition, witness by (boring) witness. Doing so reduces a story into a series of informational bullet points. It welcomes boredom, the ancient

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foe of engaged reading. It also maximizes the chances of confusing your reader, for without the familiar narrative landmarks of a beginning, a middle, and an end, your reader will be forced to construct the story that you were supposed to write yourself.

You must also be sure to pad your factual summary with as many nonessential details as possible. Middle names, dates that have no consequence, locations that are legally irrelevant, phases of the moon—these are the tidbits you must prize. By littering your brief with them, you will give your reader a pile of garbage to sort through, much to his or her own dismay. With any luck, the sorting will prove more taxing than your reader can bear.

Rule #3—Use ridiculous words.

If you write with words that people use regularly, your writing will focus your readers' attention on your arguments. But you must maximize the likelihood of distraction and misunderstanding, so reach for the outer limits of the absurd when it comes to picking words. Use ridiculous words that you'd find only in SAT prep books or the championship round of a spelling bee—words like *bumf*. *Bumf* is exactly the type of word you must find and use with regularity and passion.

Such words serve two important purposes. First, they will injure your reader's pride. Legal readers do not like to feel less intelligent than the writers of the briefs they are reading, so using words that your readers do not understand is an effective way of transforming their vanity into insecurity. Second, absurd words will force your readers to put your brief down while consulting a dictionary or performing an Internet

search. At that point, they might become distracted by stock quotations or social-networking sites. The possibilities are virtually endless (it is the Internet, after all), and all of them will serve your purpose quite nicely by maximizing the chances of turning your reader's mind into mush.⁴ Bravo.

You should also write in Latin whenever possible, and do not bother to provide translation. Tell yourself that any reader worth writing for wouldn't need you to translate a language that graced the tongues of the ancients. Never mind that it hasn't been spoken for centuries.

Rule #4—Rely on exclamation points, bold typeface, and capitalization.

If you ever wish to reach the lowest circles of the writer's hell, you must bypass reason whenever possible and baldly assert that your position is correct and obviously so. Exclamation points suit this purpose nicely. A brief filled with exclamation points reads like a tantrum—even more so when bold typeface and unnecessary capitalization complement the annoying punctuation. **THERE ARE FEW BETTER WAYS OF TRYING A READER'S PATIENCE!!!** Applied with commitment, these tools can reduce any written argument to a shouting match.

So don't be sparing. Be loud. Thankfully, some absurd convention already "requires" legal writers to write their issue statements in ALL CAPS. This practice has the virtue of making what is arguably the most important part of a brief the least readable. Be sure to keep this up and allow needless capitalization to infect other sections of your brief as well.

Rule #5—Use up your page limit.

A brief brief suggests clarity and careful editing. That won't do. Remember: you are a rascal, an engine of disaster. You want to be like Iago when you grow up.⁵ You think Cicero was a chump.

An extra-long brief sends the messages you need. It will suggest that you are desperate and perhaps careless. It will make your reader groan and turn to other work rather than confront the sheer bulk of your treatise.

If you are especially reckless, consider petitioning the court for an exception to its page-limit rule. Then your readers will know ahead of time that your brief will run on too long and that you are too busy filing a silly motion to bother editing your work. This will turn whatever anticipation your readers may have harbored into dread—an effect that will serve your devilish purposes well.

If prior training or basic decency makes it difficult for you to keep writing when you have nothing more to say, revert to the reliable tactic of repeating yourself. Choose a point that you've already made, and say it again using other words. Select a prior proposition, reappropriate it using hyper-technical vocabulary, and resubmit it to your reader in its reincarnated form. What I'm trying to say is this: don't be afraid to repeat yourself. If all else fails, literally copy and paste an earlier point to fill up space.

And don't forget the kitchen-sink approach. You must not rely on only the best arguments in favor of your position. Instead, point out *any* legal theory or source of authority that could possibly relate to the issues in your case in any way. There's no case too outdated, no statute so unrelated, that you should not marshal it in your favor. Vow to pursue victory through the sheer quantity of your arguments, not their quality. Then your reader will know that you lack either the discernment to choose your best arguments or the confidence to rely on them.

Rule #6—Insult your adversary.

Nothing screams "I am immature and unprofessional" like a good bit of name-calling. That's why some rascalion lawyers

have kept ad hominem attacks alive even though thinking men and women since Aristotle have recognized them for what they are—logical fallacies.

To undermine your credibility, use insults liberally. You can do this indirectly by accusing your opponent of lying or gamesmanship without providing any actual evidence of wrongdoing. (This technique has the added advantage of suggesting that you are a hypocrite.) Or you may do so directly by throwing out adjectives like *incompetent*, *careless*, *disingenuous*, and *greedy*.

At all costs, you must avoid any hint of respect, or any recognition that there may be a principled argument that counts in your opponent's favor. To this end, you would do well to oversimplify your opponent's arguments when you restate and refute them. In short, do not think and write like the lawyer that your professors encouraged you to become. Think and write like a cable-news commentator. Be brash and reactionary, not courteous and learned.

Rule #7—Rely on block quotes.

Block quotes are like salt: the best recipes call for only a pinch or, at most, a teaspoon. But you bake in hell's kitchen, so pour in the whole shaker. Be indiscriminate. Reproduce large portions of nonbinding opinions on tangential issues. With every extra inch of block quotation, you will reaffirm that you are not the expert your reader hoped you were, and that everything helpful about the issues in your case has already been said by a judge in another document.

Usually, your readers will simply skip over the block quotes and return to your own ghastly prose. Still, with this technique, there is always a risk that your readers will actually

abandon your brief and go find the authority you lazily copied, so be sure to accent your block quotes with error-ridden citations to the source. Then, unable to find the source that piqued their interest, your unfortunate readers will have no choice but to press further on into the quagmire you have created.

Rule #8—Be a suck-up.

A writer who relies on flattery insults his readers by treating them like unthinking peacocks who will perk up at the sound of compliments. That is the type of insult you can make use of.

So be a sycophant. One method is to trot out reverential designations whenever you refer to the court you are addressing—*this Honorable Court*, *this Esteemed Court*, etc. Use these phrases whenever you refer to the forum, and you can rest assured that your reader will be quickly annoyed. Reverential phrases come with an added bonus: they will make you seem sheepish and timid. They will suggest that you mistakenly believe judges to be the high priests of some “brooding omnipresence in the sky...”⁶ This will only further your goal of creating a written calamity.

Another proven means of brown-nosing consists in not so subtly complimenting the authority that you wish the court to rely on. Instead of writing simply, “As stated in *Case X...*,” write something like this: “As stated in *the well-reasoned and oft-cited Case X...*” The point is to subtly insult your readers by suggesting that they lack the good judgment to tell for themselves whether an opinion or article is well-reasoned or oft-cited.

The real masters of this method go so far as to compliment individual members of

the court before which they are appearing. “As Judge Y wrote in his brilliant opinion in *Case X...*” “As Justice Z wrote recently in her withering dissent in *Case X...*” This technique is the equivalent of a failed suicide attack in warfare. Judge Y and Justice Z are accomplished professionals who (trust me on this) are not waiting, hearts aflutter, for you to pronounce your blessing on their work product. They will immediately recognize your flattery for what it is, and they will lower their opinion of you and your work accordingly. So take aim and fire off as many unneeded compliments as you can manage.

There you have it—eight simple rules and a sure path to ruin. I have no doubt you will heed them well, but just in case you are tempted to resist in the interest of literary values like clarity, brevity, and persuasiveness, let me remind you once again that we are now working for You-Know-Who. I can assure you from personal experience that his disapproval is scorching.

Your Affectionate Friend,
A. J. H., Esq. ■



Austin J. Hakes is a graduate of the University of Michigan Law School and a judge advocate in the United States Marine Corps. From 2013 to 2014, he clerked for Michigan Supreme Court Justice David F. Viviano. He has served as a civil legal assistance attorney and officer in charge of the income tax preparation center at Marine Corps Base Hawaii, where he currently works as a criminal defense attorney.

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ENDNOTES

1. Milton, *Paradise Lost*, Book I (London, 1885), pp 196–197.
2. See Dostoyevsky, *The Brothers Karamazov* (New York: Macmillan, 1912), Part IV, Book XI, ch 9.
3. Proverbs 11:14.
4. See, e.g., reddit.com (but not now—wait till you're done reading this letter).
5. I meant the villain in Shakespeare's *Othello*, but the bird from Disney's *Aladdin* will also do.
6. *Southern Pac Co v Jensen*, 244 US 205, 222; 37 S Ct 524; 61 L Ed 1086 (1917) (Holmes, J. dissenting).