

# The Headless Snake of Law-Firm Editing

Pleasing your associates and writing in plain English can be tricky—trust your instincts.

By Frederick Doherty

It's a fundamental rule of persuasive writing: know your audience and write to that audience. But for a new associate assigned to write a brief, the audience isn't just the court that will decide the issue—it's also the partner who will review the brief. And that reviewing partner, of course, will help decide the associate's future at the firm.

When I graduated from law school, I thought I was a pretty good writer. I'd been taught by the best and praised for my writing. I felt confident that I was up to handling any writing assignment that came my way at the large law firm where I started out. I had no idea what I was in for.

In my first few weeks at the firm, I was assigned to work on a bankruptcy case pending in Texas. In a nutshell, our client had sold at auction some land on which it had a perfected security interest. The guarantor liable for the deficiency brought a motion to set aside the sale. The bankruptcy court denied the motion, and when the guarantor brought essentially the same motion again, the court denied it again. But when you're on the hook for a large amount of money, you can be very tenacious. Incredibly, the guarantor brought the motion a third time, and the court granted it. Our client appealed, and I was assigned to write the brief.

Now, I had been trained in the principles of the plain-English style of legal writing. So I set to work on the brief, clearly and succinctly setting forth the procedural history, the issues, and the controlling legal authority, then arguing our client's position, and concluding with a strong plea to reverse the bankruptcy court's order. I worked that brief over as only a brand-new associate in a big firm can. I worked it over until drops of

blood formed on my forehead. I thought it was pretty good—maybe not great, but pretty darned good. Apparently I was wrong.

My law firm didn't assign a rookie to handle an important case like this alone. I was working with a senior associate, who would review the brief before passing it on to the partners on the case. I gave her the brief. She gave it back. She told me that the senior partner in Texas who was overseeing this case was notoriously hard on bad writing. She

told me about how he had once read an associate's brief and given it a succinct review: "The margins are good, the typeface is fine, the rest is crap." He was the one who would have the final say on the brief.

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"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the committee. The committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. For information about the Plain English Committee, see our website—[www.michbar.org/committees/penglish/pengcom.html](http://www.michbar.org/committees/penglish/pengcom.html).

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The senior associate told me: "Try to capture the Kafkaesque nature of the guarantor's motion." Never in any of my legal-writing assignments in law school had I been asked to capture the "Kafkaesque" nature of a situation. Hell, I'd never even read Kafka. But I had an idea of what she wanted, so I set to work. I used stronger verbs, more adjectives, and (sadly) longer sentences. I wrote about the absurdity of the guarantor's motion, about its ironic success, about the injustice of it all. I gave her the brief. She gave it back. She told me it was "weak." Worse than that, she told the partner supervising her that it was "weak." She told me that I hadn't "captured the Kafkaesque nature of this case."

At that point, I was in a bad way. This was my first assignment at this major law firm, and I'd been told my writing was weak. I felt like a failure—and a fraud. I couldn't even write a brief. But I wasn't going to give up without a fight. So, once again, I sat down to capture the "Kafkaesqueness" of it all. And I wrote an opening sentence that I'm sure had never been seen before and will never be seen again: "Like a headless snake writhing in the dust, the guarantor's motion will not die." I thought that the Texas federal judge might like the Kafkaesqueness of that sentence.

The senior associate and the supervising partner didn't. They admitted it was unique, they conceded it was original, but they thought it was bad. They thought the rest of the brief was bad, too. They said that the partner in Texas would never tolerate such inadequate writing. I'd really Kafkaed up.

When the partner in Texas finally reviewed the brief, it didn't have much of my writing in it. The senior associate had mostly taken it over. I think I contributed the page numbers, but I might be wrong. I felt about as bad as a new associate in a big firm can feel. I wasn't sure I could write my name without screwing that up too.

We filed the brief. After the guarantor filed a response, I was told to write the reply brief. I still felt lower than a headless snake's belly, but I went to work.

I knew I wasn't good at Kafkaesque writing. So I did the only thing I knew how to do, the only thing I'd been taught to do. I tried to write short, concise, clear sentences. I tried to be persuasive without being bombastic. I tried to apply the controlling legal authority to the facts, emphasizing helpful cases and distinguishing contrary ones. I tried to write in plain English. And I put together something that I thought was pretty good. But I'd thought that before.

It was Friday. The partner in Texas called and asked me to fax a copy of the reply brief. I told him that no one had reviewed it yet, that it was only a preliminary draft. He didn't care; he wanted to see it.

I sent him the brief and waited for my short legal career with the law firm to end. I'd been told that he was merciless on poor writing—like mine. I was in agony. Kafka would have appreciated the situation.

The partner in Texas called me back about an hour later. I picked up the phone ready to resign from the firm, not wanting to flaunt my incompetence any further. I couldn't believe what he said: "It's a pretty good brief. We've got time to tweak it before we file it, but we could file it now. You're a good writer." I was stunned—not so much by what he said as by my reaction to it. I believed him.

Tweak it we did. The senior associate and the supervising partner fiddled with it here and there. But the brief that was

ultimately filed was pretty much the one I'd written.

So what did I learn from all this? I learned that in a big law firm briefs are drafted by all the attorneys involved in the case. Everyone contributes. Suggestions may be incompatible, if not in outright conflict. What one attorney likes, the next one won't. A brief often winds up being a consensus document, blending (you hope) the various styles and ideas. I also learned to trust my instincts. I learned what I thought I'd known all along: that I was a good writer. Maybe not a brilliant writer. But a good legal writer.

And I learned to look out for a headless snake writhing in the dust.

This article is reprinted from Volume 7 of *The Scribes Journal of Legal Writing*. ◆

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