

The "Good Manners" Aspect

Reader-Centered Writing

By Rebecca A. Lefler

I recently received an appellate brief from opposing counsel that resembled a very long rant. The lawyer accused my client of arrogance, ignorance, oblivion, desperation, publicity-mongering, and attempting to "overthrow the judicial branch" by filing an appeal. Counsel finally concluded that my client simply did not believe in democracy and urged the court of appeal to sustain the judgment in the name of freedom.

My case was not about democracy. It wasn't even about my client personally. The outcome of this case would rest on the court's interpretation of a fairly benign statute with little widespread application. But for all of this opposing counsel's sound and fury, you would have thought that the very basis of American freedom was at stake.

There are many things wrong with this approach, but the one thought that kept running through my head as I read the brief was that the writer seemed to have forgotten a cardinal rule of writing: Good writing style resembles good manners.

By "good manners" I don't mean to say that we need to be overly polite to our opponents in a brief, or that we need to stand silent when the opposing party steps out of line. Rather, the "good manners" aspect of writing refers to treating *the reader* with respect. Well-mannered writing requires looking at briefs or motions from the reader's perspective, considering the issues and style as the reader would consider them. Essentially, good manners in writing are the same as those we respect in face-to-face communication: speaking with dignity and respect; being polite but not stuffy or pretentious. In writing, this requires three distinct considerations: (1) our reader's particular circumstances, (2) what purpose our reader has for reading a brief or motion, and (3) how we can help our reader accomplish that purpose.

To risk stating the obvious, in a brief or motion we write primarily for the court. What does that mean? We are certainly writing for a judge—an experienced legal practitioner who is likely familiar with the legal issues presented in the motion. But what else does the judge know? Does she or he have a background in construction law or medical malpractice, which might provide some good analogies to the subject at hand? Knowing a judge's

background can help anchor an argument in knowledge the judge already has.

But there is also another important primary reader: the clerk. It's a good idea to be familiar with the judge's hiring practices for clerks, if possible. This knowledge and a little imagination can guide the way we craft briefs or motions. Is our reader a new clerk, fresh out of law school, perhaps unfamiliar with the case and the laws that apply? Or is the clerk an experienced research attorney with years of relevant practice to draw upon? This knowledge is especially important in busy trial courts, where big cases may span a number of clerks' terms and overwhelmed judges are more apt to rely heavily on a clerk's recommendation.

No matter what kinds of judges or clerks we write for, a universal rule applies: they are busy. They don't want to struggle through dense, difficult prose filled with undefined concepts and unexplained conclusions. This is where the good manners come in: we should strive to be considerate, and spare our readers unnecessary effort by using straightforward language. We should also keep in mind the second consideration: what does the reader need to accomplish by reading the brief?

Judges and clerks have a job to do: decide the issues. Our job, as writers, is to help the court do its job. Thus a brief is not only a vehicle to advocate a client's interests, but also a court's assistant. To help a court come to a sound conclusion, it can be useful to ask the types of questions a court would ask: why do the opposing party's counter-arguments not support her position? How does our position represent sound policy or conform better to statutory intent? We are not just advocating for our clients, but also supporting a court's decision to find in favor of those clients.

The final consideration is to determine *how* to help readers accomplish their task. This is where good style comes in—writing in plain language, for example, rather than archaic legalese. Avoid sentences that would sound strange if spoken aloud. And remember that readers should not generally be aware of a writer's style—if they are, it probably means the style is overly pompous, ambiguous, or flamboyant.

Another critical aspect of good manners in writing is letting our readers know where we're taking them. Would you want a stranger to blindfold you and drive you to some unknown destination? Of course not. But

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■ Rebecca A. Lefler practices at Tucker Ellis & West LLP in Los Angeles, where she specializes in appellate work and brief writing. She is a member of DRI's Appellate Advocacy Committee.

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when we don't give a reader an accurate idea of where we are headed in a brief, we are essentially doing just that. Good headings serve their purpose by providing readers with clues about where they are headed, which puts readers at ease. Headings also allow the reader to focus on the important issues, since headings provide clues about what the reader should look for.

Last but not least, we should respect our readers enough to refrain from misleading them. Steering readers straight shows respect for their intelligence and ability to distinguish real issues from false ones. Never mischaracterize laws or cases—that is a sure way to lose credibility in the eyes of a reader. And while it can be important to discuss policy considerations and the broader impact of an issue, don't overinflate the issues beyond their rational limits. If a case is about the interpretation of a statutory phrase that has little widespread application, for example, don't tell the reader that American democracy is at stake. Chances are that the reader will not stand and salute, but rather sigh as he or she turns back to the beginning of the brief to figure out what the case is *really* about.

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