LEGAL WRITING AS GOOD WRITING: TIPS FROM THE TRENCHES

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I. INTRODUCTION

It is an old complaint that law school does not prepare students for the practice of law.[1] The criticism is often overstated—students are encouraged and indeed often required to participate in moot court, clinics, externships, and seminar courses—but not when it comes to writing. During their law school careers, students read thousands of pages of mind-numbing prose, often without the antidote of interesting and clear writing. We leave it to Bryan Garner and others to explain why old cases—whatever their analytical virtues and precedential value—should not serve as models of good contemporary prose.[2] Suffice it to say that judges and partners

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1. *See* A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash. & Lee. L. Rev. 1949, 1976–77 (2012) (indicating that "the career, legal professoriate" was from its beginnings at Harvard in the late nineteenth century "purely academic in character and divorced from the practicing bar") (2012).

2. *E.g.* Bryan A. Garner, *Garner on Language and Writing: Selected Essays and Speeches* 21 (ABA 2009); William Eich, *Writing the Persuasive Brief*, 76-2 Wis. Law. 20, 55 (Feb. 2003) ("Lawyers whose briefs are studded with 'thereunders,' 'hereinafters,' 'hereinaboves,' 'arguendoes,' and 'saids' (as one lawyer put it: "The facts with respect to said arrearage warrant said cancellation") are really communicating only with themselves."). Mr. Garner has in fact joined a couple of federal judges in suggesting a practical cure for law students' poor writing:

don't enjoy or have time to chew over young lawyers' prose to get at its meaning; they demand clarity and concision. And clarity and concision are what we should strive to produce—along with grace and creativity when the moment calls.[3]

II. THE TIPS

Good writing is especially important today, when there is increased pressure for junior lawyers to stand out. Young litigation associates generally have fewer chances to showcase their writing skills than was once the case; for obvious reasons, time-intensive tasks like document review make their way down the chain a lot faster than do writing assignments. When writing opportunities present themselves, it is important to make the most of them because partners often peg young associates as stars based on memoranda and briefs that they write early in their careers. Clear writing often indicates clear thinking—or so many believe—and young lawyers who can think and write clearly are always in demand.

Perhaps this explains why there is no shortage of useful literature on legal writing. We draw on this literature, as well as on judicial opinions and our own experiences as young lawyers working in high-pressure situations, to offer the following tips. We hope that you will find them useful when writing appellate briefs. But we also hope that you will find them useful even earlier in your career, when you are first asked to write a memorandum containing arguments that can be incorporated into a senior lawyer's brief.

> The best way to become a good legal writer is to spend more time reading good prose. And legal prose ain't that! So read *good* prose. And then when you come back and start writing legal documents, see if you can write your document like a good article in *The Atlantic*, addressing a generalist audience. That's how you do it: get your nose out of the lawbooks and go read some more.

Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 62 (Thomson/West 2008) (quoting Judge Easterbrook of the Seventh Circuit) (emphasis in original).

3. *See* Patricia M. Wald, *19 Tips from 19 Years on the Appellate Bench*, 1 J. App. Prac. & Process 7, 21 (1999) ("The well-turned phrase in a brief can capture a judge's attention, which tends to wane after 60,000 words of legalese; the surprising allusion can set her thinking along different lines."); *see also* Eich, *supra* n. 2, at 55–56 ("Graceful legal writing didn't die with Holmes and Cardozo.").

A. Weave Quotes into Your Text, and Use Them Only When Necessary

The tendency to use block quotes is not unique to young associates. But block quotes are in fact something of a hallmark in the work of inexperienced legal writers. Whether they result from the young writer's fear of misconstruing the quoted language or her lack of confidence in her own voice, most of these cut-and-paste jobs should be reworked. Not only do block quotes confuse more often than they clarify,[4] they encourage skimming or even skipping.[5] You would do just as well (which is to say not very well at all) to print cases, highlight key passages, and hand them to the judge.[6]

Judges expect advocates to advocate, not to recite cold language on the assumption that the reader will study it and connect it to the present case. If you intend to write a persuasive brief, then you must create a compelling, original work that draws on, rather than parrots, authority.[7] Of course, a long quotation from a primary source can be necessary. But when a quote is that important, warn the reader that it is coming, that it is critical to your analysis, and that it should be read carefully. And to encourage her to take the plunge, briefly tell the reader why it is worth her time and energy. A good rule to remember is

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4. *See e.g. W. Wash. Laborers-Employers Pension Trust v. Panera Bread Co.*, 697 F. Supp. 2d 1081, 1092 n. 4 (E.D. Mo. 2010) ("Plaintiff's extensive use of block quotations, however, makes it difficult to ascertain precisely which statements it is challenging.").

5. *See* Scalia & Garner, *supra* n. 2, at 128 ("[M]any block quotes have probably never been read by anyone.").

6. *See Lowe v. Jay (In re Jay-Reyna Homes & Constr., Inc.)*, 387 B.R. 716, 720 (Bankr. W.D. Tex. 2008) ("The defendant's motion consists almost entirely of block quotes copied and pasted from a few opinions. While the court does not take issue with the use of block quotes, it would have been more helpful had the defendant provided some context for those quotes. Instead, the defendant selected three opinions . . . discussing different legal standards and pasted several lines of each opinion as her purported 'arguments and authorities.'").

7. *Cf. Tabor v. Bodisen Biotech, Inc.*, 579 F. Supp. 2d 438, 453 (S.D.N.Y. 2008) ("Plaintiff's use of large block quotes from SEC filings and press releases, followed by generalized explanations of how the statements were false or misleading are not sufficient to satisfy the heightened pleading requirements."); *Santana-Concepcion v. Centro Medico del Turabo*, 2012 U.S. Dist. LEXIS 46265, at *3 n. 2 (D.P.R. Mar. 30, 2012) (noting various deficiencies in a brief, including "excessive, unnecessary quotations from depositions and sworn statements").

this: Paraphrase when the source's exact language is not critical and quote only when it is.

B. Use the Preliminary Statement to Tell the Judge Why the Brief Is Important and Why You Should Win

The preliminary statement is an interesting creature in law firms. For partners, it's often a place to put their stamp on the brief. For associates, it's the part of the brief that is most often re-written by the partners to whom they submit their drafts. As a result, preliminary statements often feature a different writing style and even different arguments than those offered in the body of the brief. That's problematic for obvious reasons, not least of which is the confusion that the disconnect between the sections can cause.

The significance of the preliminary statement depends on the judge (and her clerks). At least some judges tend to immediately dive into the meat of the brief. But for those judges who read the preliminary statement (and we suspect that most do), this section is extremely important. Yet some young lawyers, overlooking the demands of busy appellate dockets, do not see the value of summarizing something that is spelled out later in the brief. This leads many to use only a rote recitation of the relevant standard and the adversary's purported failure to meet it, thinking either that the remainder of the brief will do the rest of the work or that the partner will write something more enticing. That's not enough. The preliminary statement is the associate's chance to show off her creativity, to impress her supervisor, and to persuade the judge.

We view the preliminary statement as carrying out two functions: to tell the judge why she should care about your brief and to summarize your arguments. The latter purpose is self-explanatory, and the former is often overlooked. For instance, many preliminary statements simply state that a discovery request is overbroad. But so what? Most motions seeking protective orders will say the same thing. Tell the judge what the dispute boils down to, and why she should rule in your favor. Would her ruling in your favor expedite the litigation? Would it be easy for her to do—just a matter of confirming settled law? Would it, in other words, be an almost effortless way to move

the case along? Or would the judge be breaking new ground, writing perhaps on a cutting-edge legal issue? These are the types of appetizers that intrigue the judge and encourage her to chew your arguments.

C. Avoid Throwing Mud at the Other Side—It Wastes Time and Distracts from Your Argument

Litigation frequently stems from relationships gone awry, making it natural for clients to encourage their lawyers to throw low blows. But there is no place for that in briefs.[8] Ascribing bad motives to opposing counsel or using personal attacks makes you seem petty and only raises questions about the strength of your substantive arguments. If your argument was strong, the judge may think, why would you need to attack your adversary? Be forceful, be persuasive, and be professional.[9] And most importantly, stick to the law and the relevant facts.[10]

D. Connect Your Arguments to the Legal Standard

Arguments matter only if they move you closer to victory. You can argue persuasively that the sky is blue, but if you never

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8. *See Miller v. Adv. Studies, Inc.*, 635 F. Supp. 1196, 1200 n. 5 (N.D. Ill. 1986) ("*Both side's* attorneys should spend less energy slinging mud at each other and (1) spend more time researching the legal issues involved in a motion which will occupy the court's time; and (2) try to *cooperate* with each other to resolve this case either by settlement or trial.") (emphasis in original).

9. *See Bettencourt v. Bettencourt*, 909 P.2d 553 (Haw. 1995) (referring matter to state disciplinary committee where the "lack of professionalism and civility demonstrated in appellant's opening brief does not comport with" the rules of professional conduct).

10. *See* Wald, *supra* n. 3, at 21–22 ("Examples of 'no-nos' taken from a recent brief include general allegations that the author's opponent 'misstated issues and arguments raised by appellants,' 'made selective and incomplete statements about the evidence,' 'distorted the causation issue.' Judges' eyes glaze over as we read that kind of prose."); Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C. L. Rev. 567, 569 (1999) ("A top quality brief also scratches put downs and indignant remarks about one's adversary or the first instance decisionmaker. These are sometimes irresistible in first drafts, but attacks on the competency or integrity of a trial court, agency, or adversary, if left in the finished product, will more likely annoy than make points with the bench."); *see also* Eich, *supra* n. 2, at 57 ("Casting aspersions on your adversary throws a shadow on your own standards and on the strength of your argument. Trashing your opponent or, perhaps worse yet—from the judges' standpoint, at least—trashing the trial court, will, at best, distract the judges from your arguments. At worst, it will irritate them; and that, I am sure, is not what you want.").

explain why that matters, the judge is likely to skim the section of your brief arguing that it is so. Connect your argument to the legal standard.[11] Show the relevance of what you are trying to prove. Doing so has two primary benefits. First, it encourages you to focus your brief on what matters, so that you do not waste the appellate court's time with, for instance, a discussion of the trial court's factual findings in a case subject to clear-error review. Second, it encourages the judge to incorporate your brief into a judicial opinion, moving you one step closer to victory.

E. Emphasize with the Grace and Power of Your Prose and the Logic of Your Structure, Not with Your Font

Emphasizing by bolding, highlighting, italicizing, and underlining is convenient: You don't have to think how to structure your sentence so that the reader will understand the most important parts of your message. But it doesn't work.[12] Judges are drowning in court filings and may skim when they think a brief allows it. Put yourself in their shoes. You have too much to read in too little time; you pick up a brief and see emphasized language; you naturally begin to speed-read, focusing on what is bolded and ignoring what is not.[13] The result is a disconnected narrative that fails to persuade.

Even the diligent judge who reads every word will get the impression from an over-emphasized brief that you must shout random points at the court because your inability to organize your argument makes you incapable of presenting it coherently.

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11. *See e.g. In re Feature Realty Litig.*, 2006 U.S. Dist. LEXIS 56287 at *12 (E.D. Wash. Aug. 11, 2006) (pointing out that it is not the court's "obligation to research and construct legal arguments for the parties" and that the movant had "failed to connect its argument to any legal basis for a claim of summary judgment," and concluding in consequence that summary judgment was "not warranted"); *cf. NRDC v. Abraham*, 388 F.3d 701, 705 (9th Cir. 2004) ("The abstruse and abstract arguments by the parties show that this case is not presently fit for review.").

12. *See e.g. Pontiac Gen. Employees Ret. Sys. v. Stryker Corp.*, 2011 U.S. Dist. LEXIS 72362 at *8 (W.D. Mich. 2011) ("In many instances, portions of block quotations are emphasized with italics and bolding; no explanation of the significance of such emphasis is provided.").

13. *Cf.* Wald, *supra* n. 3, at 10 ("With the docket the way it is—and growing (federal court appellate filings went up again last year)—we judges can only read briefs once. We cannot go back and re-read them, linger over phrases, chew on meanings. Your main points have to stick with us on first contact—the shorter and punchier the brief the better.").

Emphasize instead by using headings that aim at the heart of your argument, a structure that leads with your strongest contentions, and diction and syntax that feature crisp and original prose, including an occasional back-loaded sentence that allows the most important information to resonate at its very end.[14]

F. Implement a Structure and Stick to It, but Be Sure to Tell a Story

Many young attorneys churn out briefs that lack structure or are too mechanical. Having "Background" and "Argument" sections in an otherwise crowded and rambling brief is usually not enough. Give your reader breaks and provide her with a roadmap before you take her on the journey through your argument.[15] Explain where she is going and why she should follow your route. If there are a number of alternative paths to the destination, tell her that at the outset. Don't just dive in. And use topic sentences along the way. At the same time, remember that judges are human and that humans are persuaded by stories.[16]

Two examples illustrate the point. Young attorneys are often relieved when their legal analysis must be filtered through a multi-prong test. But walking the judge through each factor does not substitute for telling your side of the story. The judge will not review your analysis and that of your adversary and pick the better of the two. She reads the briefs to be persuaded and then issues a decision based on her own reasoning.[17]

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14. *Wright v. Elston*, 701 N.E.2d 1227, 1231 (Ind. App. 1st Dist. 2008) (pointing out that "well-reasoned arguments making proper references to the record and supported with citations to legal authority are far more persuasive to this court than rambling stream-of-consciousness assertions which rely on excessive use of bold-face type"); *see also* Scalia & Garner, *supra* n. 2, at 122 (characterizing the use of boldface type for emphasis as "visually repulsive," and urging writers to consider emphasizing the "punch words" by putting them at the ends of the sentences in which they appear).

15. *See e.g. Allen v. Astrue*, 2011 U.S. Dist. LEXIS 84884 at *31 n. 2 (N.D. Ill. Aug. 1, 2011) (lamenting that a brief is "disorganized and at times, unintelligible").

16. *See e.g.* Wald, *supra* n. 3, at 11 (instructing appellate advocates to "[m]ake the facts tell a story").

17. *See e.g.* Richard A. Posner, *How Judges Think* 207 (Harv. U. Press 2008) (explaining that, in reaching decisions, judges ask themselves "what outcome would be the more reasonable, the more sensible, bearing in mind the range of admissible considerations

Winning takes more than simply making the better argument; it takes persuading the judge, who is often free to come up with her own argument, to fill the void left by your adversary. To persuade, tell a story—and be succinct and interesting.[18] If that means leaving an analysis of the multi-prong test's factors for last, then so be it (but mention them up front[19]).

The same goes for over-relying on case law. Briefing is not a research contest (although thorough research is a prerequisite for a good brief). Too many opposition and reply briefs fail to engage the other side, and too many lawyers operate under the assumption that briefing is about highlighting the "good" cases and minimizing the "bad" ones, and that the winner will be the side that brings the most friends to the party.[20] Authority—decisional or statutory—should be woven into the story. Precedent alone rarely controls the outcomes of disputes; if it did, most cases would probably settle well before briefing.[21] A good story persuades the judge to fit your case within existing precedent.

G. Learn Grammar and Proper Usage

This seems basic enough, but even experienced attorneys frequently disregard fundamental rules.[22] As a result, court filings are routinely littered with sentences starting with "as such," substituted for the proper "therefore," "thus," "consequently," or even "as a result." ("As such" has a precise meaning. Learn it.) Other common mistakes include confusing "that" for "which," which stems from a lack of appreciation for

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in deciding a case, which include but are not exhausted by statutory language, precedents, and other conventional materials of judicial making, but also include common sense, policy preferences, and often much else besides").

18. For excellent advice on how to declutter and simplify your writing, consult William Zinsser, *On Writing Well: The Classic Guide to Writing Nonfiction* (7th rev. ed., HarperCollins 2006), particularly sections 2 and 3 in its Part I.

19. *See* sub-section E, *supra*.

20. *Cf.* Posner, *supra* n. 17, at 229 (expressing dissatisfaction with briefs drafted by law professors in an atmosphere that "treat[s] an appeal as a duel of precedents" that ignores the workings of "the judicial mind").

21. *See* Wald, *supra* n. 3, at 12 (warning lawyers not to "over-rely on precedent" because "few cases are completely controlled by it").

22. *See* Scalia & Garner, *supra* n. 2, at 61–64 (providing practical guidance on the fundamentals).

the difference between restrictive and non-restrictive clauses.[23] And some senior attorneys continue to peddle the tale to their subordinates that sentences should never start with "and" or "but," that the bulkier "however" (which itself belongs only in the middle of a sentence) is more dignified—this all despite reputable authority explaining why the and-and-but myth is both wrong and unfortunate.[24] A complete list of common misconceptions is beyond the scope of this article, but you can improve your writing by consulting the many authoritative essays and books out there. And you should: Judges may discount your credibility (or worse) if your briefs include repeated grammatical infractions.[25]

H. Pay Attention to Syntax and Avoid Unnecessarily Long Sentences

It afflicts lawyers of all stripes: the long-sentence disease. Our writing—no matter how convoluted and impenetrable—makes perfect sense to us; when we re-read our sentences, they flow effortlessly because we anticipate their every curve and know exactly where they lead. But other readers don't share that background.[26] Nor do they have the attention span to plow through one dense sentence after another. And although the choppy prose that results from disconnected short sentences is perhaps a little less common, it too fails to keep the reader engaged. In short, readers get bored with ineloquence.

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23. *See e.g.* Zinsser, *supra* n. 18, at 74–75.

24. *See e.g.* Bryan A. Garner, *Garner on Language and Writing: Selected Essays and Speeches* 63–81 (ABA 2009); John R. Timble, *Writing with Style: Conversations on the Art of Writing* 78–80 (3d ed. Prentice-Hall 2011).

25. *See Mermelstein v. Maki*, 830 F. Supp. 184, 187 (S.D.N.Y. 1993) ("Submissions like plaintiff's papers, reflecting inadequate and incomplete research and riddled with grammatical and typographical mistakes, should be deterred, not rewarded. They taint counsel's credibility, affront the dignity of the Court, and impair the efficiency of the judiciary.") (footnote omitted); *cf. Breaux v. Pritchard*, 2010 BL 43808 (E.D. La. Mar. 1, 2010) (denying motion because, among other things, "Plaintiffs' motion is so riddled with grammatical errors that the Court finds it hard to decipher Plaintiffs' arguments").

26. *O'Diah v. State*, 2010 U.S. Dist. LEXIS 18239 at *6 (N.D.N.Y. Mar. 2, 2010) ("The Complaint also includes multiple repetitive clauses, connected by long, confusing sentences which are, at best, difficult to decipher. Indeed, it is difficult to fully comprehend the nature and details of the present claim.").

Like musicians and dancers, some talented writers (like the Chief Justice and Justices Scalia and Kagan) are born with natural rhythm and may need to devote themselves to nothing more than a little refinement. But we mortals require training, which is best accomplished by making a habit of reading good writing.[27] In the age of e-readers, that should be easy: Download *The New Yorker*, *The Economist*, and *The Atlantic*, and read Hemingway, Updike, and Fitzgerald.

I. Remember that Footnotes Have Their Place, Which Is Small and Insignificant

Footnotes are a common pest. Some local rules even limit their use.[28] Why have judges restricted footnotes, which can occasionally be helpful? And why would attorneys put substantive text in footnotes?[29] Apparently, many lawyers think that a marginal argument not worth prime real estate can be cleverly tucked away in a footnote. But it's not clever at all.[30] Burying an argument in a footnote is a signal to the judge that

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27. *See* Scalia & Garner, *supra* n. 2, at 61 (noting that improving as a writer is a "lifelong project" in which the first step is "to read lots of good prose").

28. *See e.g.* United States Court of Appeals for the Third Circuit, *Local Appellate Rules*, http://www2.ca3.uscourts.gov/legacyfiles/2011_LAR_Final.pdf, at 33 (providing in Rule 32.2(a) that "[e]xcessive footnotes in briefs are discouraged") (accessed Mar. 3, 2014; copy on file with Journal of Appellate Practice and Process).

29. We do not address here the obvious offender, who thinks that putting as much text as possible in single-spaced footnotes is a legitimate means of gaming page limits; many judges already preempt these transgressions. *See e.g.* Robert W. Gettleman, United States District Judge for the Northern District of Illinois, *Standing Order Regarding Briefs, Motion Practice, Disclosures, and Protective Orders*, http://www.ilnd.uscourts.gov/home/JUDGES/GETTLEMAN/motionpractice.pdf, at 2 ("Excessive and/or substantive footnotes are strongly discouraged and will be counted as double-spaced passages when computing the number of pages in a brief.") (accessed Mar. 3, 2014; copy on file with Journal of Appellate Practice and Process). Our concern is the otherwise savvy lawyer who uses footnotes for the wrong reasons. *See e.g. Ohio Head Start Assn. v. U.S. Dept. of HHS*, 873 F. Supp. 2d 335 (D.D.C. 2012) (describing counsel as "highly skilled" and complimenting their presentation of "complex legal arguments," but noting that their "tendency to respond to important substantive issues in footnotes frustrates the overall effectiveness of their briefs").

30. For a particularly colorful description of the reasons for avoiding this practice, see Eich, *supra* n. 2, at 55 ("As in most other affairs of life, I would say that moderation should be the rule; keeping in mind, perhaps, Noël Coward's observation that '[h]aving to read a footnote resembles having to go downstairs to answer the door while in the midst of making love.' In other words, it better be good.").

either you don't believe in it or it's not important. "Why should I waste my time then," the judge will often think, "because if the argument is not important to the lawyer making it, certainly it is not important to me." In fact, some appellate courts have held that footnoted contentions are not even preserved for appeal.[31] So an argument not made in the body of the brief, in many cases, is not made at all.

Bryan Garner advocates an idiosyncratic approach: Use footnotes for references only—a method that (1) disciplines the writer to avoid dumping substantive material below the line, and (2) removes the clutter of citations and dense parenthetical explanations from the body of the brief, requiring the writer to weave the latter into the narrative.[32] We have our reservations about using a method that remains out of the mainstream: Judges are too trained on parentheticals, we think, and some may be dismayed by their complete absence.[33] And a brief without parentheticals reads too much like a law review article for our taste.

But Mr. Garner's broader point is well-taken. The young lawyer should be encouraged to make her points through full sentences, not parentheticals, and to avoid what Mr. Garner calls "talking footnotes."[34] Yet writers can produce stronger and more compelling arguments without implementing the Garner method, and we believe that talking footnotes are still appropriate in four rare situations. The talking footnote, it seems to us, can be used effectively (1) to introduce something potentially—but not necessarily—significant that may otherwise require the judge to browse the record on her own, like citations to previous decisions and their docket-entry numbers; (2) to help the judge write her opinion by giving her additional authority

31. *See e.g. U.S. v. Dairy Farmers of Am., Inc.*, 426 F.3d 850, 856 (6th Cir. 2005) (pointing out that "[a]n argument contained only in a footnote does not preserve an issue," and that "an appellant's brief must include a statement of the issues presented for our review, and an argument with respect to each issue").

32. *See* Scalia & Garner, *supra* n. 2, at 129–35 (summarizing the Garner-Scalia disagreement about relegating citations to footnotes).

33. *Id.; see also* Richard A. Posner, *Against Footnotes*, Court Review 24 (Summer 2001) (expressing dissatisfaction with the Garner method).

34. *See e.g.* Bryan A. Garner, *Clearing the Cobwebs from Judicial Opinions*, Court Review 4, 4 (Summer 2001) (differentiating between "reference footnotes" and "talking footnotes").

(without overwhelming her with pointless string-cites of settled law); (3) to address questions that might occur to the judge while reading the brief without distracting from the story, like a short description of claims made in the complaint, even if they are irrelevant to a particular appeal; and (4) to preempt an argument that the writer expects the opposing side to make.

J. When Writing Memoranda for Senior Attorneys, Research Thoroughly, Think Deeply, and Write Confidently

A good place to try the no-footnote approach might be formal memoranda that senior lawyers will use when preparing to write their briefs. Here, the purpose is to survey the legal landscape and answer a precise legal question, so the academic tone that naturally flows from turning parentheticals into full sentences is quite appropriate. But be careful to educate without inundating. The young attorney's common mistake is giving a supervising lawyer too much without explaining much at all. If you are at a law firm and search the firm's database for legal memoranda, you'll likely find yourself drowning in string citations, block quotes, and cautious statements. All of these are symptoms of apprehension.

A young associate's inclination is to do the heavy lifting for the senior attorney by copying relevant statements, dumping them on a page, and then calling the memo done, hoping that the collected authority will open up the clouds on its own and reveal its meaning for the particular case.[35] But resist the urge at all costs. Young lawyers are trained—and paid—to think and to analyze, and the heavy lifting that senior lawyers expect of them is the analysis itself—not merely the collection of authority.

Remember that there is an answer to every legal question, even if neither the legislature nor the courts has directly addressed it. Your job is to find that answer if it's in the statutes and cases, or to come up with it if it's not. And if you think there is room for a competing interpretation of the law that diverges from the one you find most compelling, say so and then explain why the view you advocate is more persuasive.

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35. This urge is understandable—the hierarchical structure of big law firms doesn't always encourage young associates to think critically. *See* Lucy Muzzy, *Maximizing the Value of Outside Counsel*, 60 Fed. Law. 56, 57–58 (Sept. 2013).

Your aim in writing a memorandum for a senior attorney is two-fold. You want her to be so impressed by your work that she will think of you as smart, creative, and dependable. You then want her either to lift whole sections of your memorandum into her brief or to give you the chance to write the brief yourself. A memorandum that collects the relevant authority won't accomplish either of these goals, but a memorandum that analyzes the authority and then applies it to the facts just might.

III. CONCLUSION

Writing is an art, and there is no silver bullet when it comes to a good brief. There is only practice, reading, and learning good habits (not to mention unlearning bad ones).

The bottom line is that as a profession, we can do better. Even experienced lawyers too often produce briefs that are confusing, dull, and dense. Judges (and clients) deserve better. Start by following the tips in this article, all of which focus on common shortcomings that we have observed as practicing attorneys and judicial law clerks. But these tips are just a starting point. Literature on good writing abounds, as does good writing itself, in novels, court opinions, briefs, and magazines. So keep reading. It's a good investment.