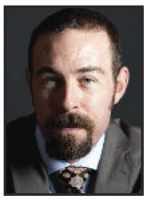


DECEMBER 2011

On legal writing: Hemingway, not Faulkner

Brevity is not only the soul of wit, but the crux of the pleading


Cooper

By Miles B. Cooper

Thunk! It arrived on my desk with the kind of weight that said, "I am a substantial pleading." I looked up at my assistant, whose eyebrows and shoulders rose in a vaguely pitying, vaguely supportive way to remind me she was only the messenger. I looked down, flipped it open to the introduction and read the first sentence.

Or more specifically, tried to read it. Eight lines, multiple semicolons and more than a few hereins later, I stopped. And started again. And then again. While I could blame it on post-prandial lethargy, I was not *that* tired. The writing was simply terrible. It was one of those pleadings where half the battle was going to be articulating, in a simple fashion, what opposing counsel was asking for, before we ever got to why the argument was flawed.

Hemingway v. Faulkner

I've got nothing against Faulkner. He was a prolific writer who employed a stream of consciousness style, combined with complex and lengthy sentences. He received the Nobel Prize which, last time I looked, was notably absent from my trophy case. But his style is not an easy read. It involves frequent stopping and returning to the beginning of a section to reread it.

Contrast that to Hemingway. Short sentences. Minimalist approach. Direct. A seasoned reader can devour more than a couple Hemingway novels in the same time it takes to take on one Faulkner. So what makes them different and how can we use the differences to draft convincing legal writing?

Keep it short

By this, I mean the sentence *and* the pleading. A short sentence is easy to digest. It has punch. And it keeps the reader moving forward. A short pleading is a blessing to the research attorney and the judge. By way of example, no-one reads as much as the judge and research attorneys working the law and motion department. If you take the time to simplify your argument—shrink it without losing the message—you will win over a fan. It is not as difficult as you think. It involves writing, setting aside and then taking the time to edit. Here editing means refining, not adding more.

Make it interesting

Face it, a lot of what we've got to address is not riveting stuff. Throw the reader a bone. Drop in something unexpected that clarifies the issue in a novel way *and* captures the imagination. Readers of past columns may remember historical notes about a battle tactic or the origins of the term sub rosa. We've referenced everything from Sun Tzu to movie quotes in our pleadings. My personal favorite? Robert De Niro's quote from *Ronin*[1], "The map is not the terrain," to support an argument for why we were entitled to a site inspection instead of just photos and a diagram. Yes, that sounds like we'd be entitled to it without a problem. But the inspection involved shutting down production for a section of a plant to the tune of $60,000 and the defendant was fighting tooth and nail. Sometimes a graphic is warranted—there is no rule against using them in pleadings. And today's document presentation is limited only by your imagination. Those pearls make an otherwise boring pleading stand out from the crowd.

But not too interesting

Everyone knows the person who always goes too far for a joke. There's a judicial opinion out there about a tree's lack of standing to file an environmental suit. Very clever. But for every successful *A Modest Proposal*, there are 50 poorly executed pieces. If you're going to try to shoot the moon with your pleading, run it by a few people before you submit it. And not just the yes folks but the ones willing to question you.

A plug

Writing is as important to our craft as presenting at trial or mediation. An 800-word column is not enough to ingrain a quantum shift in writing. If you have not taken the time to attend a Brian Garner session on writing, do yourself a favor. Sign up for the next time he is in town. Your writing will improve dramatically. He's amusing. And not only will your judges appreciate it, but your clients will thank you for the resulting rulings.

Writ large

We took opposing counsel's argument and explained to the judge the issue and the remedy sought. Substantially under the page count, including a full page taken up by a diagram. The most time-consuming piece? The introduction. Re-written by our crew multiple times. In fact, that 200-word intro took more

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time than the rest of the pleading. A couple years later, when the judge was no longer on the bench, we were able to talk with him about his decision. We learned our succinctness, and the decision to use a diagram to explain the issue, carried the day.

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[1] De Niro, R. (1998) "Ronin," Metro-Goldwin-Meyer Studios, Inc., Santa Monica, CA.

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