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Can't Get There from Here: Recalculate into Better Legal Writing

Heather Ridenour

American University Washington College of Law, hridenour@wcl.american.edu

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BY HEATHER E. RIDENOUR
GUEST COLUMNIST

Can't Get There from Here

"recalculate" into better legal writing

As I write this column, I have just returned home from a trip to Louisville, Kentucky, with my younger brother. It was the first time that either of us had been to Louisville, and we both enjoy exploring new places together. While navigating new streets and learning local lingo, I was reminded how, as lawyers, we need to personify navigation systems and be the human version of a GPS. I heard this analogy many years ago at a conference, and I wish I could remember who presented the idea to give them full credit, but the concept has stuck with me: A lawyer must be an excellent guide for her reader.

Many of those who read our work product might be new to the law, new to a case such as the one we have, or an opposing counsel whose job it is to find flaws and holes in our arguments. Even when we are writing for judges, some of the information and arguments we convey might be new concepts, as judges were once lawyers who likely specialized in certain areas of the law. As travelers, we want our GPS to be clear and provide easy-to-follow, step-by-step directions. As lawyers, we need to adopt the same characteristics and perhaps to an even greater extent since there is no "recalculating" feature for our writing. When traveling, if I happen to turn down the wrong street or decide en route that there is something different I want to see, I know my trusty GPS

will recalculate my location and immediately get me back on track. Our writing as lawyers must be clear, precise, and contain complete step-by-step analysis to ensure that our audience fully understands our documents on first read. This column sets forth some pointers on how to recalculate your way into better legal writing:

Advocacy writing must be clear. Clear writing means that the reader can follow your arguments easily. There is no unnecessary language, no philosophical prose, and no overly descriptive terminology. Too much information in legal writing, like too much detail in giving directions, does not allow the reader to focus on what is important. The reader does not want or need a historical development of the law in an advocacy document (unless you are advocating that the law be changed based on its history). The reader needs only to know the current law and how it applies. This does not mean that you always must program the "shortest route" to your argument "destination," but it also does not mean that you should always take the scenic route. What lawyer or judge has time for taking the scenic route? There are no billable hours on a scenic route! Although scenery can be beautiful, the scenic route can use up resources, take time away from other goals, disrupt necessary timelines, and annoy your reader.

Advocacy writing must be precise. Precise writing allows

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the reader to follow your points with exact understanding. There is a clear-cut route for your reader. To return to the GPS example, “Turn left in one-half mile on Saint Street” is precise and easy to follow. “Make a U-turn when possible” is not as precise. What does that mean? Did I miss my turn? Is my destination on the other side of a one-way street? Can I phone a friend for help? In legal writing, you cannot step outside of your document at the precise moment someone is reading it to explain what you meant. It must be precise on paper. Instead of saying “the statute bars this suit,” say “the statute of limitations for this claim is five years, and this suit was filed on August 15, 2016, which is six years from the date of harm.” If you have to verbally explain what you meant to the reader, you have lost the advocacy race. If your reader is asking to phone a friend for clarification, you might have lost both your case and your client.

Advocacy writing must demonstrate the argument and analysis step by step. The writing should allow the reader to see the arguments and follow each step of your logic. The writing should demonstrate each step you took and what your thought process was in coming to your argument. When we skip a step, the reader does not always come with us. Many times we lose our readers because we come from different backgrounds, we do not see the same connections, we did not read the same cases, or we did not have a case with a similar situation last year. So if I merely state that an orange and a grapefruit are similar and don’t explain why I came to this conclusion, you,

as the reader, will decide yourself why you think I thought they were similar. As an advocate, I do not want my reader to have to take that extra connecting step because what if the reader does not reach the conclusion I wanted using the same logic? Instead, I want to lay it all out like a turn-by-turn list. Oranges are similar to grapefruit because both are fruits with rinds that must be peeled before eating. As the advocate, we have all of this information rattling around in our head, and our job is to systematically lay it out for the reader to bring them along on this new argument “trip” with us.

Lawyers do not get a second chance to explain what they meant the first time around. There is no “recalculating” feature in the law that puts our readers back on track after our writing got them lost. Your goal should always be to have clear, precise writing that gives step-by-step analysis allowing your reader to arrive at his final destination, which is ahead, past the Wendy’s, on the “write.”

Questions, comments, and suggestions (as long as they are precise, logical, and easy to understand) are welcome at hridenour@wcl.american.edu. ■

Heather E. Ridenour is a legal writing professor at American University, Washington College of Law, where she sometimes collaborates (bless her heart) with Professor Spratt.