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If You've Seen One, You Have Not Seen Them All

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If You've Seen One, You Have NOT Seen Them All

My 10-year-old was getting ready for Valentine's Day. Well, as much as a 10-year-old boy in fifth grade can. Each year, his elementary school class has a Valentine's party. Many of the valentines are store-bought with pictures of Spider Man, Princess Leia, or Pikachu emblazoned on them along with stock phrases, such as "Tangled in your Web," "You Rule in my Galaxy," or "Glad I Caught this One." These valentines convey the right message, but they are nothing special. Also, you might get four or five of the same ones from your classmates. These kinds of valentines end up in a landfill. The kinds of valentines that end up in a scrapbook are homemade, each decoration carefully chosen and each greeting personally selected and tailored to its recipient. These valentines endure and impress. These are the valentines that you remember.

Homemade valentines are like good legal writing. Each document a lawyer writes should be carefully crafted and specifically tailored to the individual client. Sure, you might borrow here and there from similar documents you wrote for other clients. And sure, at times boilerplate language might be necessary to meet a statutory requirement, but

the end product should be based on what best serves your client in her specific case. Not all clients are created equal, and cookie-cutter thinking and lawyering presupposes that they are. More and more lawyers (and law students) rely on samples. Samples are prevalent. You can pretty much find an online sample for any type of legal document that you need to write. These samples, however, are like the valentines that end up in the trash. They are nothing special. No one pays them much attention, and although they sometimes get the job done, a lawyer should do more than phone in barely competent representation. Being a good lawyer means bringing your individual skill and expertise to bear in a particular case. Trying to fit your case into a sample results in awkward language, underdeveloped points, and paint-by-numbers lawyering. It's like shoving a puzzle piece into a space where it does not belong. Something looks amiss, something is not quite right ... *By George, I've got it!* I saw this same document on a pre-printed form in Office Depot, where you apparently *can* buy a "lawyer."

Overreliance on samples by my first-year law students is quite honestly the bane of my existence as a professor. Because students are writing memos and briefs for the first time, it

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to **affect change,** and to **fight**
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makes sense to give them a sample. But, unfortunately, rather than thinking how the facts of their client's case should be used to write a document that effectively serves the individual audience and purpose, they instead look at the sample and try to change as few words as possible. This results in some funny writing, but this approach is no laughing matter. The problem has become so widespread that I have recently toyed with inserting a made-up legal term into my sample — perhaps *blindus reliancee* or *itsa shame tocopy*. I hazard to guess that these nonsense words would find their way into at least one-third of their documents.

So, what's my problem with boilerplate language? Samples, written for the masses with no particular client in mind, contain very few specifics. They are the vanilla ice cream of the legal writing world. At first, they look good and might even taste that way for a few bites, but eventually, you begin wishing you had ordered chocolate syrup and sprinkles. Samples are also fraught with possibilities for error. One client does not like to see facts from another client's case mistakenly put into a document in his case, but this happens all too frequently when one fails to carefully make sure that each document is individually tailored. My all-time favorite example of this hasty inattention to detail is custody interrogatories in a case where there are no children. Not only does it waste a precious

1 of 30, but also it sends the client a strong message about his or her lawyer's credibility.

With the internet so readily available, we cannot avoid the use of samples, but we can impress upon new and existing lawyers that if you have seen one case, you have not seen them all. Modeling individual thinking and showing creative lawyering will go a long way to re-energize the legal profession. We became lawyers to promote justice, to affect change, and to fight for the downtrodden, not to become tired in our writing, thinking, and advocacy. Lawyers are more than just scribes. It is quite simple to take something a client or other lawyer has written and copy it verbatim. Ask yourself this question: Do you need to spend tens of thousands of dollars and countless hours learning to be a lawyer just to copy a form?

So, I implore you, take charge of your future and that of the legal profession. Make each word in every document count. Take care to write documents that serve your particular client well. Make the document stand out. Make the document one that ends up in a scrapbook, not the trash or a formbook tailored to nothing but a generic client's problem. ■

Specifically tailored questions, comments, or suggestions are welcomed at dspratt@wcl.american.edu.