Giving Purpose to Your Life as a Legal Writer

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WRITER’S BLOCK

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giving “purpose” to your life as a legal writer

Dad, I didn’t mean to!”
“I couldn’t help it, Dad!”
“It was an accident!”
“But Daaaad, I didn’t do it on purpose!”

As the father of an active, talkative seven-year-old boy (see last column), hearing comments like the ones above is an everyday occurrence. Many things “seem” to happen without rhyme or reason, and my son taking full responsibility for his actions or lack thereof is as rare as a perfectly-proofread paper in a 1L writing class.

Despite anecdotes to the contrary, lawyers should not act like seven year old boys. Lawyers need to be acutely aware of the purpose for which they are writing a document, intending every consequence and meaning every word. Although law students write documents for academic purposes (and to get a good grade), practicing lawyers are not afforded such luxury. Lawyers write documents for specific reasons, usually because someone (a client, a judge, an opposing counsel, etc.) wants an answer or hopes for a certain result. The best lawyers both consider their audience (again, see last column) and their purpose for writing from the outset. Once you have a sense of your purpose and audience, you will not produce a rambling document that contains irrelevant information and detail that does not help achieve your goal as a writer.

Many lawyers think “why me?” when receiving an assignment or when a daunting writing task looms before them. Before putting pen to paper (or fingers to keyboard), think “why” generally, and make sure you answer these questions to fully understand, recognize, and appreciate the reason you are writing a document – giving “purpose” to your life as a legal writer:

1. Why am I writing this document and what question should this document answer?

Think of legal documents like snowflakes or fine bottles of Virginia wine (did you think I could get through an entire column without a plug?): each is unique, and each changes from season to season. Most documents (even documents of the same type) should be written for a slightly different reason, as no two cases are exactly alike. In the age of boilerplate, cutting and pasting, and one-size-fits-all thinking, resist the temptation to think that your purpose for writing a document in one case will mirror your purpose for writing the same document in another.

Some documents also have multiple purposes. For example, a settlement proposal letter sent to an opposing counsel has two purposes rolled into one: 1) persuading the opposing counsel to convince her client to accept the terms (persuasive writing) and 2) predicting what a court would likely award to each party if the case does not settle (predictive/objective writing). Similarly, an email to a client often provides information to the client (objectively) to persuade her to take or refrain from taking a certain action.
Most documents tend to answer some question, at least implicitly. A settlement proposal answers the implicit question of why the agreement would be a fair deal for both parties; a motion, on the other hand, answers the direct question of why a judge should rule in your client’s favor.

2. What is my answer?

No matter how hard you thought in advance about the reasons for writing a document and what questions a document should answer, the document, no matter how well written, does not achieve its purpose if you fail to actually provide the answer.

Doing a wine tasting at a Virginia winery answers the question of why you should buy the wine: if you like the wine, you will buy a bottle. If a document seeks to answer a question, even implicitly, an answer is expected. Make sure that the document does, in fact, answer the questions it intends to; if it does not, then the reader will not “buy” into the document, and its purpose will not be achieved.

Consider this scenario: you receive a motion filed by opposing counsel. Although the substance of the motion is sound, the document contains poor grammar and numerous proofreading errors. More than likely, this document does not fulfill its purpose, as the writer has lost all credibility with the reader as an effective legal writer (and perhaps lawyer in general). If a lawyer takes shortcuts or produces sloppy work, then he might never achieve his purpose.

Just to be clear, I meant in this column to give you some pointers about effective legal writing. It was intentional, and I did it “on purpose.” Questions, comments, and suggestions (as long as they fulfill a complimentary goal) are welcome at dspratt@wcl.american.edu.

Culture of Inclusion

Continued from page 9

A genuinely inclusive practice could make the workplace a better place for people of every type.

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