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The Proof(reading) is in the Pudding

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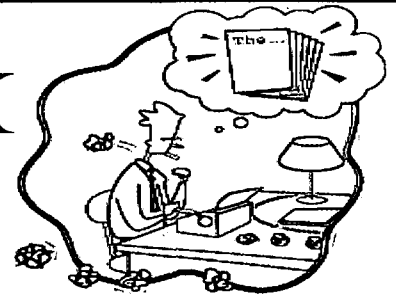
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WRITER'S BLOCK

THE PROOF(READING) IS IN THE PUDDING

BY DAVID H. SPRATT



Last summer, at a Maryland State Park with another proofreading aficionado (yes, we are out there), I encountered this sign:

Not recognizing the prohibition against alcohol because of the typo, I brazenly grabbed a beer and jumped into a kayak.

In the age of spell check, what has happened to good, old-fashioned proofreading? What used to be a routine practice seems to have gone by the wayside. Lawyers and law students frequently file pleadings, prepare documents, and turn in papers with grammar, punctuation, and spelling errors that could have been caught simply by paying attention.

To combat this alarming trend, at Washington College of Law, where I teach legal writing to first-year law students, we have a program-wide proofreading policy:

[S]tudents must thoroughly proofread all assignments, including drafts, before handing them in. Any assignment that contains more than four proofreading errors will be returned without further assessment and will not be counted as handed in until it is corrected. It will be counted as late and penalized 10 percent.

Sounds a bit harsh, even Draconian? Perhaps, but the policy seems to work for most students. After the first 10 percent deduction, students rarely, if ever, turn in another assignment with more than four proofreading errors.

Let's impose this rule on the sign maker in South Bend, Indiana, who recently installed a billboard presumably meant to extol the virtues of the area's public school system by referring to its website, where viewers could find the "15 best things about our public schools." Now, as a product of Fairfax County Public Schools, and the son of a retired elementary school principal, I am a huge proponent of public school. Luckily, I live in Virginia, not Indiana, where sending my 5-year-old to a private kindergarten would now be more appealing.

Is this an academic exercise (no pun intended) with no real-world application for lawyers? Fortunately, no. Judges are increasingly jumping on the proofreading bandwagon, chastising counsel for sloppiness.

In a recent footnote, the United States Court of Appeals for Veterans Claims stated: "The Court . . . requests that, in the future, counsel . . . proofread his documents before submitting them to the Court. Parts of the brief, while substantively acceptable, are difficult to understand because of typographical errors and poor editing." When a judge reprimands you for failing to

proofread your brief, is your client going to freely pay for your legal fees? Or, with an outstanding balance of \$10,000, will she write a check for \$100, telling you she forgot to proofread, missed a comma, and left the last two zeros off your check?

Similarly, the District Court for the District of Columbia wrote last year: "[Counsel's] submissions do not reflect the due care that this Court expects from an experienced member of the bar: his filings are filled with often-inaccurate citations to irrelevant case law, and include innumerable and blatant typographical and grammatical errors that even a cursory proofread should catch."³ No matter how sharp you are on the law, if you tick off the court with sloppiness, your client and your credibility will suffer.

Lawyers are also taking notice of the importance of correct legal writing, using poor draftsmanship and/or proofreading to their clients' advantage. Not too long ago, Fairfax County Circuit Judge Marcus D. Williams heard a case involving the following Virginia Code provision⁴:

A person is guilty of reckless driving who fails to stop, when approaching from any direction, any school bus which is stopped on any highway, private road or school driveway for the purpose of taking on or discharging children.

Relying on the plain language of the statute, Judge Williams determined that the statute prohibited the failure to stop a stopped school bus. As the driver had only passed a school bus without stopping, Judge Williams found the driver not guilty under the literal text of the statute. Fortunately, the Virginia General Assembly plans to amend this statute.

Why does proofreading matter? In this age of poor writing, we, as lawyers, need to maintain our craft. We are trained and paid to be precise, and precision is impossible without technical accuracy. No matter how strong your arguments are, they will lose much of their persuasive effect if a judge has to sift through countless grammar, spelling, punctuation, proofreading, and citation errors (yes, Virginia, there is a new edition of the Bluebook).

So what can you do to ensure better proofreading? I am certainly not advocating that courts or law firms impose a proofreading rule like we have at Washington College of Law (though, upon reflection, doing so might result in better drafted documents). Instead, I am advocating an improved pride in one's work — an attention to detail that forces us as lawyers or law

Continued on next page

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students to do what we were paid to do — represent our clients to the best of our ability. Given our profession, the best of our ability means an error-free document.

Alas, what is a poor proofreader to do? Well, I offer several words of wisdom:

1. Save proofreading until the final step in your drafting process. By that time, you will have already checked the document for substance and organization and can focus only on grammar, mechanics, punctuation and proofreading. If you cannot help yourself from making substantive changes when you proofread, save the file as a PDF and then proofread, so that you cannot easily make changes.

2. Know your proofreading demons, and look for them. For example, if you constantly mix up "there" and "their," search your document for both words, making sure that in each instance, the word is used correctly.

3. Print out a hard copy of your document — paper documents are typically easier to proofread than computer documents. If you are tied to your computer, make the font size bigger when proofreading so that the errors are easier to see.

4. Read aloud. Doing so makes you read more slowly,

and the proofreading and grammar errors are more apparent.

5. Find a proofreading buddy. As lawyers, you are not bound by an academic honor code, so you can have others in your office proofread your documents.

6. Read backwards — start at the end and read backwards sentence by sentence. Reading backwards avoids any impression of correctness arising from the knowledge of what you meant to say and makes you focus on individual words, not substance.

7. Look for common errors that spell check alone will not catch: probable for probably; reasonable for reasonably; from for form; trail for trial; statue for statute.

As lawyers, we are wordsmiths: the devil is truly in the details. If you haven't proofread for some time, try it. You might like it. The proof(reading) is in the pudding. As always, well-proofread, grammatically correct questions, comments, and suggestions at dspratt@wcl.american.edu are welcomed.

Notes:

1. <http://adweek.blogs.com/adfreak/2010/09/billboard-touts-south-bends-pubic-schools.html>
2. *Wheeler v. Shinseki*, 2011 WL 465341, at *4 (Vet. App. Feb. 10, 2011).
3. *Hickey v. Scott*, 738 F. Supp. 2d 55, 73 (D.D.C. 2010).
4. Virginia Code § 46.2-859 (2010).

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