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WRITER'S BLOCK

RESOLVE TO BECOME A BETTER WRITER

BY DAVID SPRATT



With the passing of the holidays, thoughts turn to bettering oneself for the New Year!

1. What can I do to make myself a better father? "No problem, I'll spend more time with family -- right after I finish my next column."

2. How can I get more exercise? "January 1 is a Thursday; I'll go back to the gym on Monday."

3. How can I kick the Diet Coke addiction? "If I drink a Diet Dr. Pepper, does that count?"

No doubt many of these broken resolutions ring true, hitting a little too close to home. Internet statistics (once again, you have to love my sources!) show that over 50% of Americans who make New Year's resolutions fail to keep them (and I hazard to guess that each one of these failed resolvers had a very good reason for "falling off the wagon.")

This year, your resident columnist recommends a different kind of resolution: become a better legal writer (and if you are reading this column after January 1, it is never too late to change for the better). Although becoming a good legal writer encompasses many facets, three simple steps will move you down the path to legal writing salvation.

1. Remember audience and purpose.

Before writing any legal document, ask yourself two basic questions:

a. Who is my reader?

Is my reader a "friend" or a "foe"? Does my reader understand legal terms of art? Given my reader's education and experience, what kind of vocabulary should I use? (Please don't read into the use of simple, easy-to-follow language in this column! I am simply a card-carrying member of the plain language club.)

b. What is my goal?

As you plan, write, and then revise, remember that people need the documents that you write for a specific purpose, not because you are trying to regurgitate as much information on the topic as possible. Consider the following: What questions am I trying to answer? What is my ultimate purpose (to inform, to persuade, or a little bit of both)?

If you keep your intended audience and purpose in mind at all times during the drafting and revising process, you should be able to avoid the trap of going on at great length about issues the reader does not care about or simply has no need to think about. Once you have a sense of your purpose and audience, you will be better able to plan your attack strategy: a) how much law to explain; b) how many facts to provide; c) whether to use legal terms and if you need to define them; d) whether and how much to discuss cases; and e) whether to provide citations. Remember audience and purpose -- doing so should result in a more reader-friendly, effective document, one that will both please the reader and get the job done.

2. Eschew overreliance on form books.

Whereas, on or about the night prior to Christmas, there did occur at a certain improved piece of real property (hereinafter "the House") a general lack of stirring by all creatures therein, including, but not limited to a mouse.

Lawyers need not sound like they are speaking a foreign language. If "The Night before Christmas" had been copied from a form book, would it still be a beloved children's story?

In practice, many lawyers use form books and rely on boilerplate language. Although forms are a helpful resource, forms should not take the place of original drafting. Forms, if used, should be modified and applied to each client's individual case. Why, you might ask, are forms so dangerous?

a. Forms are written broadly; accordingly, forms are general and abstract, which frequently leads to ambiguity. Forms often contain outdated, superfluous language and legalese (primarily because lawyers are so afraid to deviate from the boilerplate, leaving in language that at one time might have been meaningful, but now has no real legal significance or point).

b. Boilerplate language often results in rote, uninspired thinking. A good lawyer uses a document to advocate on behalf of his or her client, choosing carefully and understanding the purpose of every word, sentence, and paragraph. When presented with a template, make sure you know whether and why each provision and word should be included.

c. Many lawyers also rely heavily on documents drafted for previous clients. While again, such documents may be beneficial, over-reliance on documents from previous clients can lead to embarrassment or worse. Hasty proof-reading often results in one client's name or facts inadvertently appearing in another client's documents. It always made me laugh when I would receive discovery questions about custody when the parties had no children!

As a drafter, you are like a master chef who might have 20 or 30 recipes (or forms) for a certain dish (or document) that you might refer to from time to time for ideas. Each time the recipe will be a little different depending on the quality of the ingredients, the number and tastes of your customers, the time you have to prepare the dish, etc. Treat each document similarly; use forms as a resource or jumping-off point, but think through what each document needs to best serve your audience and purpose.

3. Proofread Carefully

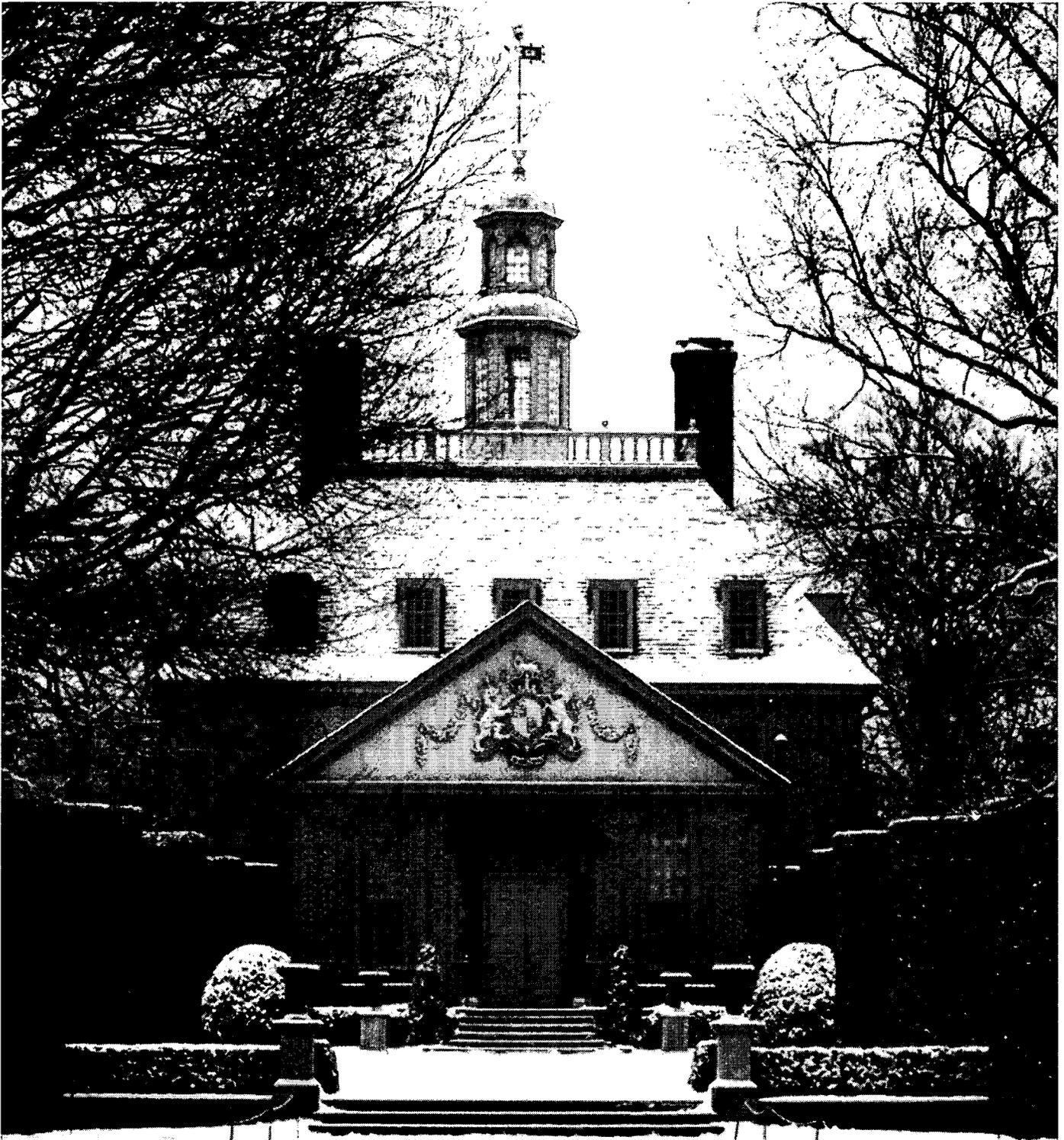
"Should odd acquaintance be forgot, And never brought to mind?"

Had the drafter of Auld Lang Syne failed to proofread, each New Year, we might be trying to get rid of our less desirable, off-the-wall friends, rather than trying to maintain our old friendships: a very different task indeed!

Proofread for typographical errors, spelling mistakes, run-on sentences, incorrect punctuation, and other appropriate mechanics. Failure to proofread or grammatically incorrect sentences will destroy your credibility as a lawyer and might end up costing you a client or referrals from other lawyers.

So this year, as a New Year's resolution that you CAN keep, decide to embark on improving your legal writing. As lawyers, we are wordsmiths, and language is our ultimate craft. Use it wisely.

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