A Letter to New (and Old) Lawyers: Why You Need to Write Well and How to Do It

Daniel R. Karon

God gave us two ways to communicate: speaking and writing. And because our profession, these days, offers meager opportunities for oral argument, we need to always be the better writer. Thing is, most lawyers are dreadful at it.

Why Do We Need to Be the Better Writer?

Many lawyers don't care about the quality of their writing. More truthfully, many lawyers don't *think* about the quality of their writing. Worse still, many lawyers believe their writing is good when it isn't — the classic Dunning-Kruger syndrome.

These truths have special consequences for new lawyers because new lawyers should know how to write or at least should recognize bad writing, particularly from their above-reproach partners. Young lawyers should understand the importance of being good writers. But why should we expect new lawyers to refine their writing skills when their bosses produce such uninspiring work product?

Writing commentators ceaselessly *tell us that* we must be good writers rather than *showing us why* we must be good writers. Yes, I'm accusing the commentators who preach "show, don't tell" of telling us instead of showing us. And that's why I'm beginning this essay by explaining *why* the following good-writing tips are essential and not merely stating *that* they are. New lawyers —

perhaps my essay's most essential (and vulnerable) audience — will be my muse.

I've taught complex litigation at several elite law schools. This privilege has put me around scores of exceptionally talented law students interviewing with the best law firms. My students often ask me what employers are looking for in associates. When I hear this question, it's like getting a four-seam fastball over the center of the plate. Here's how the discussion usually goes:

Me: You're asking me about your interviews, but let's flip the script. Let's instead pretend that you're interviewing *me* for a job. Let's also pretend that you can ask me only one question, the answer to which will largely influence whether you hire me. What's that one question?

Student: Hmmm . . . What's your greatest strength?

Me: Sensible, but no.

Student: Why do you want to work here?

Me: Good question, but again, nope.

Student: Then I'm not really sure.

Me: Consider the following. You have employees. You might have case costs. You have lots of other overhead, too. Law is a profession, but it's also a business — the law business. And what do businesses require to run?

Student: Money?

Me: That's right — money. Money's *not* a dirty word, and don't believe anyone who tells you differently. So considering this, what's essential for you to know about me? What's your one question?

Student: How can you make me money?

Me: Precisely!

Now that we're in the proper conceptual place — a place that considers the business realities of law (realities that, last I checked, still don't get taught in law school) — I can turn to what any of this has to do with writing.

Young lawyers — especially new law grads — don't have a book of business. Worse yet, they tend to not understand the need for it. And few young lawyers' families own Fortune 100 companies, meaning they can't expect to receive gobs of transactional or litigation work in their early practice years.

So where does this leave young lawyers in their quest to make money for their law firms? What skill, if properly nurtured, channeled, and pursued, can operate as a suitable substitute for a book of business, at least to start? What skill can enhance the profitability of *someone else's* book of business and increase a law firm's revenue?

Good writing.

If you're the best writer in the firm — nay, the business — your writing will win motions, which wins cases. If you win motions, partners will keep asking you to work on their cases. At some point, a client might even step over your firm's partners and hire you directly. Either way, you'll keep your clients happy, which keeps them coming back, which makes your law firm money.

Being a great writer doesn't depend on background, and it doesn't discriminate based on socioeconomic status. Being a great writer is accessible to anyone who has the time and interest in becoming one. Of course, by this, I don't mean to suggest that good writing can't also enhance *seasoned lawyers'* bottom line, because it can.

So how do lawyers — young *and* old — leverage their time and interest to become great writers? The answer begins with their writer's library.

What's in Your Writer's Library? (Do You *Have* a Writer's Library?)

My son used to play baseball. His coach told him to always bring with him his bat and glove. These were his tools. What are our tools as professional writers? (And if you don't believe you're a professional writer, you're wrong.) You can find them in your writer's library.

You don't have a writer's library? Then it's time to start one. After all, words are our stock in trade.

Creating a modest but functioning writer's library is simple and requires only a few staples:

- *The Chicago Manual of Style* (not *The AP Stylebook* — that's for journalists);
- *The Bluebook* or *ALWD* citation manual;
- Strunk & White's *The Elements of Style* (of course);
- Bryan Garner's *The Winning Brief* (Professor Garner has been my writing mentor for over 25 years, ever since my then-boss and writing pro Justice Michael Hyman invited him to speak at our Chicago law firm);
- Garner's *Redbook: A Manual on Legal Style*;
- Garner's *The Chicago Guide to Grammar, Usage, and Punctuation*;
- *Garner's Modern English Usage*; and
- Matthew Butterick's *Typography for Lawyers*.

If you want to get wonky and dig even deeper into writing style and theory, add William Zinsser's *On Writing Well* and Stephen King's *On Writing: A Memoir of the Craft*.

Also essential is to read good writing, such as *The New York Times*, *The Washington Post*, or *The Atlantic*. Or if your tastes lean more to the right, *The Wall Street Journal* or the *National*

Review. Reading the classics — for delicious turns of phrase and inspiring syntactical gems — is essential, too.

A writer's library, coupled with mindful reading habits, will help you hone your craft. What's craft, you ask? It's the art of writing. It's grammar, syntax, usage, punctuation, organization, cohesion, typography, and an ear for what makes language sing. If you can master craft and combine it with persuasive storytelling and theme (which we'll discuss in a moment), your briefs will be unbeatable.

Another way to develop your craft and elevate your prose is by studying and practicing writing every day. Useful writing lessons are more accessible than you might think. Several free subscription services promote daily content, including essential grammar and punctuation exercises. (For instance, my exercises while writing this essay involved the subjunctive mood and gerunds.) If you want to get started, the best email subscriptions are found at dailywritingtips.com, lawprose.org, quickanddirtytips.com, and grammarbook.com. Finally, if you're genuinely committed to elevating your writing game, take as many Bryan Garner writing seminars as you can.

Techniques for Persuading the Busy Reader (and Who's Not a Busy Reader?)

Make an Immediate Impact

A good brief-writer begins the writing process by understanding what a good brief isn't. It's not designed to show off or take shots at the other side. It's also not written for your client — at least not primarily. Your brief is for an audience of one — your judge. Like a fiction novel, your brief must grip your judge and keep their attention. But unlike a fiction novel, your brief must persuade.

The best way to persuade your judge is to begin with what Bryan Garner calls a deep issue. And by *begin*, I literally mean start your brief with it. No vapid and wasteful "Now comes Defendant and hereby moves this Honorable Court to dismiss" preamble. Your judge already knows whom you represent and the nature of your document by looking at the case caption and document title.

Supreme Court Justice Felix Frankfurter observed more than half a century ago that in law, "the right answer usually depends on putting the right question."[1] A deep issue asks the right question and in a way that avoids making your judge dig for the goods. Delivering the goods — quickly capturing why you're taking your judge's time — is the surest way to achieve buy-in. Conversely, a sprawling and directionless brief with the issue buried somewhere around page 3 (if even there) is the surest way to put off your judge.

As for starting strong, think of it this way: fiction writers are taught the importance of a powerful opening sentence. Most of the great literature we enjoy involves precious and provocative openers that summarize the story in a single sentence, often allowing us to identify the book.

Here's a fun quiz to prove my point. I've listed a few noteworthy openers; you identify the book and articulate its story:

> "Call me Ishmael."[2]
>
> "It was a bright cold day in April, and the clocks were striking thirteen."[3]

---

1 *Rogers' Estate v. Helvering*, 320 U.S. 410, 413 (1943).

2 *Moby Dick* by Herman Melville. Crisp, cryptic, and claustrophobic, it's probably the most famous of famous first lines, grabbing the reader's attention like a slap in the face. Who is this man who calls himself Ishmael — if, indeed, that's his real name?

3 *1984* by George Orwell.

> "To say that I met Nicholas Brisbane over my husband's dead body is not entirely accurate. Edward, it should be noted, was still twitching upon the floor."[4]

Each of these openers is unmistakable and makes you want — *need* — to read on. The second example, for instance, immediately signals that in Orwell's dystopian future of *1984*, nothing is certain and nothing is fixed. Even time can be manipulated when the government has toppled God. This riveting opening line sends a haunting message that sets an eerie tone for one of the twentieth century's greatest novels.

Now, let's apply these themes to brief-writing. Professor Garner instructs that fashioning a deep issue (i.e., a powerful opener) means expressing it syllogistically in three sentences. In a legal syllogism, the first sentence (the major premise or predicate of the conclusion) is the law. The second sentence (the minor premise or the subject of the conclusion) describes the facts. And the last sentence (the conclusion) expresses the necessary and desired outcome that naturally follows from feeding the facts through the law.

But Garner's deep issue is meant to present a persuasive question rather than an overt conclusion. So Garner instructs us to flip the syllogism's conclusion sentence from a declarative statement to an interrogative one, complete with a question mark. This way, his deep issue invites the judge to answer in a way that wins your case. The rest of your brief merely supports the answer that you've encouraged your judge to reach.

For over 20 years, I have been framing deep issues according to Professor Garner's brilliant formula, and it has served me well.

---

[4] *Silent in the Grave* by Deanna Raybourn. Honestly, I don't know much about this book. I just know it's a killer opening line that sets the tone and makes me want to read on.

So how does this style of issue-framing look in real life? Let's start with a typical summary-judgment issue that lacks zip and impact:

> Whether Defendant breached his contract with Plaintiff.

Sounds familiar, right? The judge's answer to this question (or statement, really) is, "How am I supposed to know?" Worse yet, these sorts of *whether*-statements often end with a question mark, making them especially jarring given that they're mere fragments.

Now, here's a deep-issue version that leverages the available facts and law:

> Defendant's contract with Plaintiff required Defendant to give Plaintiff ten apples for ten dollars. Plaintiff gave Defendant ten dollars, but Defendant gave Plaintiff only eight apples. Did Defendant breach his contract with Plaintiff?

See the difference? Assuming the correctness of the law and facts, the judge can reach only one conclusion: Plaintiff's. (By the way, the major-premise or law sentence in transactional cases is often a contractual promise or policy.)

Develop a Compelling Theme

While crafting your deep-issue opener, you will see your argument's theme start to emerge. You need a powerful theme to drive your story and carry your judge through the brief. Without a strong theme, you have a tepid story. Your theme should shape every word and page of your brief.

Think about the themes that have fueled the books and briefs you've read: justice, responsibility, perseverance, truth, redemption. If you can steer a compelling story through a potent theme and then combine everything with rock-solid craft (as well as legal research and argument), you'll have yourself a killer brief.

Themes aren't difficult to identify, especially knowing that a finite number of them exist (as in several hundred or so). But the

stories we shape around these themes aren't limited at all. That's because even though *responsibility*, for instance, has been discussed by scads of lawyers, it hasn't been discussed by *you* — channeled through and shaped by your experiences, voice, and style.

Likewise, the *legal* themes we write about — arbitration, ERISA, and Rule 12(b)(6), for instance — have been discussed countless times, too. But again, they've not been discussed by *you* — channeled through and shaped by your experiences, voice, and style.

As with so much of legal writing, the pieces are already there; it's simply our job to arrange them smartly. By fashioning your story through an eternal theme that accommodates and complements your legal arguments, you'll have a fresh and original brief that hits the emotional and legal high notes in a way that your competition will likely never have contemplated.

Build Your Story Through Structure

Your need for theme development and persuasive control extends throughout your brief. You achieve this by adding persuasive section headings that derive from your outline. (Professor Garner's *The Winning Brief* has many strong examples.) For me, outlining is always my first step.

The difference between a weak and a strong section heading is the difference between the generic and neutral "Rule 12(b)(6) Standard" and the thoughtful and assertive "Rule 12(b)(6) promotes a forgiving standard that supports this Court's order sustaining Plaintiff's complaint." The second version leaves your judge with no doubt about what follows and why.

But even when writers succeed in keeping the court's attention, invariably things crumble in their empty conclusion sections. I'll bet this conclusion looks familiar: "Based on the foregoing, Defendant's motion should be denied." This conclusion adds nothing to the

brief, and its passive-voice phrasing (easily lawyers' most common gaffe) makes it even worse. The writer might as well have skipped it and saved on word count or page length.

A useful and effective conclusion should highlight a brief's main points in a few words, then wrap up with a stirring and committed pitch for truth and justice directed by the author's theme and position. I see purposeful conclusions in almost none of the briefs I read, except mine.

Prime Your Narrative Creatively

None of these persuasive techniques work unless fueled by a good story. We are a species of storytellers, whether sitting on our child's bed or standing before a judge or jury. Everyone wants a good story to sweep them away. Our profession is built for it. It's no surprise that John Grisham writes best-selling books and Hollywood churns out film after film about what we do.

To demonstrate the power and provocativeness of story, consider the following sentence: "The cat sat on the mat." This sentence has a subject, a verb, and a direct object. It's the type of direct, straightforward sentence you'd routinely see in a brief. But does it stir anything in you?

Now consider this version: "The cat sat on the other cat's mat." Hmmm. Now, *that* raises questions — and plenty of them. Why did the cat do this? What's so special about the other cat's mat? Do the cats know each other? Do the cats like each other? Did the other cat react angrily? Did the first cat respond? If so, why? If not, why not?

I've given you the beginning of a story. This is precisely the attitude that your brief's storytelling — its Statement of Facts section — must embrace. Sure, legal writing should avoid raising *too* many questions and must emphasize answers, but the principle here is that your story must move the reader forward. Your client shouldn't pay for a brief that amounts to just another layer on the

judge's slush pile. Your brief should stand out and hold your busy judge's attention.

So be memorable, be different, and take chances. But most of all, be readable. Don't write like a lawyer. (I'm not, am I?) Make your judge's experience the same as if they were reading the latest Lee Child novel, unable to put it down at 11 p.m. despite tomorrow morning's early motion call. We're storytellers — period. And there's no reason why your writing shouldn't evoke a good storyteller's response.

Say More by Saying Less

Telling a compelling story requires addition and subtraction. So don't skimp on editing.

Michelangelo, it's said, would look at a lumpy, clumpy block of marble and imagine the beautiful form he wanted to free from within it. Of course, he could free that form only through subtraction. Any lawyer–editor looking at a draft needs this same mindset. So heed Strunk & White's advice to "omit needless words." Or, better put, "omit words." If you don't believe me, perhaps you'll believe Chief Justice John Roberts: "I have yet to put down a brief and say, 'I wish that had been longer.'"[5]

I recently cut 30% of the words from a draft, and the edits immensely enhanced my brief's readability. I think Chief Justice Roberts would be pleased.

Strong editorial habits also spare you (and your reader) from the drone of lawyerspeak. Consider this actual sentence, which will surely test your patience (and perhaps your gag reflex):

> The undersigned hereby returns to the party of the first part the attached and enclosed stipulation to dismiss in the above-entitled matter; the same being duly and timely executed by myself.

[5] 13 Scribes J. Legal Writing 5, 35 (2010).

That's 32 words. The writer could have simply said, "Here's the signed stipulation." Four words. My edit results in a 90% word savings.

The thoughtless style in the example above adds to your word count, infuriates your judge, and detracts from your story. I often read a co-counsel's brief, written in this typically stilted style, and find myself rooting for my opponent. Justice Ruth Bader Ginsburg agreed. "[E]ye-fatigue," she said, "and even annoyance will be the response [lawyers] get for writing an overlong brief."[6] So tighten and lighten your story.

And on a practical note, verbosity often triggers usage errors and style missteps. For instance, the bloated passage quoted above contained an improper semicolon and an awkward reflexive pronoun.

So as Justice Antonin Scalia and Professor Garner instructed: "Sit down and write. Then revise. Then revise again. Finally, revise."[7]

Show, Don't Tell

Most crippling to lawyers' ability to relate their stories is their penchant for telling, not showing. *Telling that* instead of *showing why* is ineffective. After all, tell them and they won't believe you, but show them and they'll have no choice but to agree.

An easy way to show, not tell, is to avoid arguing by adjective and adverb. Consider this real-life example:

> Defendant's blatant disregard for the law and this Court is too much to ignore. Defendant's continued attempts to improperly manage and wrongly operate its property violate a plethora of state laws.

---

[6] *Id.* at 137.

[7] *Making Your Case: The Art of Persuading Judges* 80 (2008).

What good does shouting at the judge with adjectives ("blatant" and "continued") and adverbs ("improperly" and "wrongly") do? If you strip the prose of these pace-suckers, it loses no meaning and becomes *more* compelling.

But a more sophisticated method of showing, not telling, exists. This technique derives from fiction writing. My favorite example for illustrating this comes from the Eagles' Grammy Award–winning single "Lyin' Eyes." Remember the song's first line? "City girls just seem to find out early, how to open doors with just a smile." What was Glenn Frey saying about his troubled protagonist? That she was savvy, had moxie, and knew how to get things done.

But if this were his goal — his message — why not just say, "She was savvy, had moxie, and knew how to get things done"? Sure, he could have told us this, even describing her qualities and capabilities through a laundry list of adjectives. But that method would have only *told* us about her rather than allowing us to discover her ourselves. Simply telling us would have made the reader's impact, if any, superficial.

So instead of *telling us that* she had these qualities, Frey carefully chose vivid language to *show us why* she felt as she did. For instance, Frey's adjective "city" (before the noun "girl") plants, in a single word, the backstory of a person who hasn't been insulated from life's grittier elements. The adverb "early" reinforces this, suggesting a premature loss of innocence. "How to open doors" is an idiomatic metaphor for the pursuit of ambition through systemic stratagems. "With just a smile" reveals her keen awareness of stereotypical male vice and vanity.

That's a lot of information from just 16 words. And it's a richer, deeper image than a strict description could have given us. Granted, Frey requires us to infer and deduce. But that's what engaging readers (or in Frey's case, listeners) is all about. When we read or listen, our brain does this automatically, instinctively. It's what makes reading fun and interesting.

Now, let's apply this show-don't-tell principle to something legal. Say, for example, we're opposing a motion to dismiss our complaint in a disturbing case involving a high-school principal who abused his students. When it's time to introduce our antagonist, Principal Jones, we could simply say, "Principal Jones was a monster who routinely molested Plaintiff and other students."

But we want to *show* the court *who* this monster is and *how his actions felt* to his young victims, not merely *tell* the court *what* he did. So let's consider this version instead:

> Principal Jelly Fingers. That's what they called him — at least those whom he molested. One time, when Jane Doe needed a permission slip signed, she had to ask herself whether her absence from class was so important that it was worth feeling those jelly fingers on her body.

This version painted a word picture — free from boring *be*-verbs and empty adjectives. It invited the reader to see, feel, hear, and even smell and taste what happened, as upsetting as it was. It made you shift in your seat a little when you read it, didn't it? This shift-in-your-seat approach is more compelling than the typical presentation of subject, linking verb, and adjective complement.

Now you see what I mean when I say that this technique of showing, not telling, isn't easy. It's creative and thematic — qualities developed through time and thought. One bit of advice is to stay in touch with your senses as you write your Statement of Facts. Think about how things look, feel, sound, and taste, whether it's a hospital room or a corporate conference room.

Conclusion

Brief-writing isn't fiction, but we *are* telling stories. Sure, we lace our stories with law, policy, and doctrine, but we're telling stories just the same.

And because we're storytellers, it's essential to appreciate that every story — whether about justice, responsibility, perseverance, truth, redemption, or whatever — has already been told. It just hasn't been told by *you*.

So build your writing library and read what's in it. Practice your mechanics regularly. Work on developing case themes and thinking about facts tangibly. Practice using concrete language that shows readers and builds on themes. And remember why it's all so important.

Now, go and write that killer brief.