Arkansas Association of Defense Counsel

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Stop Writing Like a Lawyer

By: Brett D. Watson

"What? Stop writing like a lawyer? I *am* a lawyer. Plus, most of what I do is verbal at depositions, on the phone, and in the courtroom. I'm not reading anymore of this nonsense." If that's your first response to this article's title, think again.

As lawyers, we write all the time. We file motions and briefs. We send letters to judges. Almost every one of us writes (even if we first dictate). And that's not going to change. The written word is becoming more important as technology transforms the legal culture. So you might as well do it right.

By "do it right," I don't mean putting your commas in the right place and spelling words correctly. Those things help because you don't want anything to detract from your message. But I'm talking about something more fundamental—effectively communicating so a judge will (1) understand your argument and (2) rule in your favor. Here are some tips to help you do that.

1. Write simply so that even a nonlawyer will know what you're saying.

This heading is not a knock on judges, but judges are busy and, contrary to popular belief, do not enjoy reading legal gobbledygook. Many of them—especially the appellate judges I tend to practice in front of—have thousands of pages to read every week, and they are not immune from the same trappings you and I face. Like the rest of us, the digital age has shortened their attention spans. The siren call of the latest Razorback recruiting report might triumph over your 25-page brief filled with hard-to-understand legalese. Or the judge might find a coffee break with a colleague down the hall to be a nice break from an unnecessarily complicated motion. In a very real sense, you compete for judges' time and attention.

One of the best ways to retain a judge's attention is to stop writing like a lawyer. For example, start doing these things if you're not already:

- Say in plain English on the first page what you want and why.
- Avoid unnecessary legalese.
- Shun acronyms.
- Ditch words like "Plaintiff" and "Defendant." Call people and companies by name.
- Don't use hard-to-read fonts.
- Be concise.
- Include frequent headings to guide the reader.

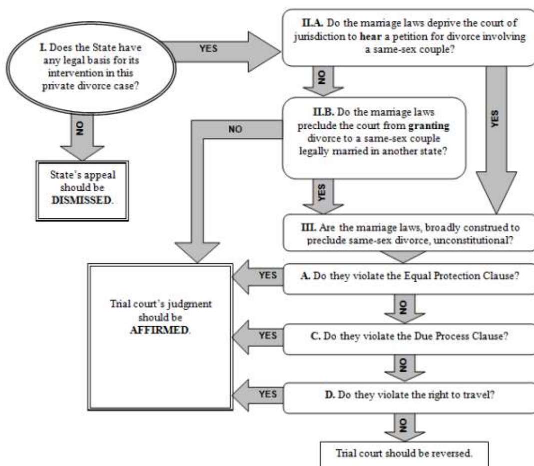
If you do these things, you will be well on your way to keeping the judge's attention.

2. Show *and* tell.

For many of us, the words "show and tell" bring back elementary-school memories. Much of what lawyers do is a grown-up version of that childhood tradition. When we write, we engage in a judge-focused version of show and tell. That is as true today as ever.

Here's why: Not only has technology shortened our attention spans, it has made us more visual. For example, there was a time when a paragraph-long description of data might easily resonate with a reader. With the proliferation of pictures, charts, and diagrams on the internet and in publications, it is more difficult for the average judicial reader to process written descriptions. So, if a fact or concept is susceptible of being demonstrated, don't just tell the judge; show the judge.

To show you what I mean, here are some examples. In a case with several complicated legal issues, the Texas firm of Bell Nunnally & Martin LLP gave the court a flowchart to guide the process:



The judge knew the exact legal analysis the party wanted him or her to follow. You can be sure the judge made an extra copy of the chart to analyze the issues.

In an appeal about a motor-vehicle accident, we could have used words to describe for the Arkansas Court of Appeals what the intersection looked like. We did, but we also cut and pasted from an evidentiary video to help the appellate judges better understand the situation:

Debbie Sparrow Caulley's View (westbound) (Add. 52)

David Tilley's View (eastbound) (Add. 52)

Arg 4

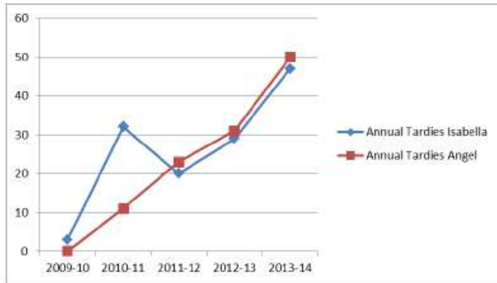
In an annexation fight, the issue was whether properties were adjacent to each other. The other party argued that a road separated the properties. We said, "Yes, but the property line goes to the middle of the road." In addition to saying so, we showed the court with a color-coded map:

Lots 8-15 and the lots across the street extend into the road, touching each other in the middle. The highlights in Rockport's map showing the properties stopping at the edge of the street are wrong. Here's what the map should look like:

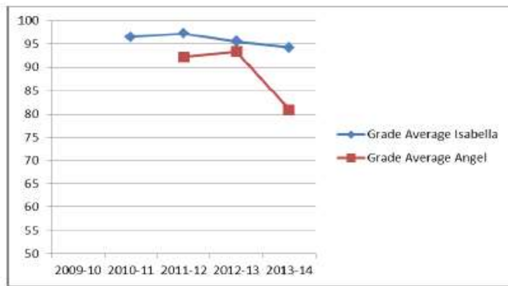
In a domestic-relations case, suppose school records show that the children's tardies

increased and their grades decreased while living with the father for several years. Rather than just cite addendum pages, show the court:

A rise in tardies . . .



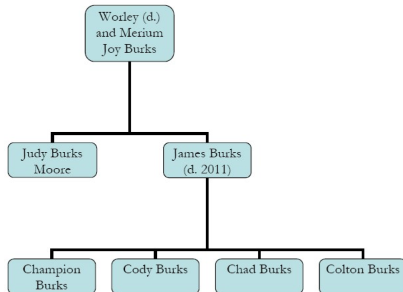
. . . and a decline in grades



Add. 100-01.

Or suppose you have a case involving seven people with the same last name. Don't just tell the court how they're related; show the court:

607. James died in May 2011 and is the father of Champion, Cody, Chad, and Colton. **Add. 641.**



The 2001 Trust owns the property. **Add. 713** ¶ 10; **741.** James Burks, deposed in 2009 before he died, admitted that neither he nor his children had any interest in the property. **Ab. 50, 52.** None of them contends otherwise.

Although most of our AADC members are not regularly involved in annexation battles or domestic-relations fights, perhaps these examples will spark ideas on how to show and tell judges in your writing.

3. You already show and tell juries.

The concept of showing and telling judges through writing is not that different than what you already do with juries. You don't let witnesses rattle on; you use exhibits and aids to help jurors understand. Why? Because it's more effective. It is with judges too.

Of course, your argument to a judge won't be identical to the one you make to a jury. Unless it's a bench trial, judges tend to decide the law; juries decide facts. You therefore cannot wear your trial hat when writing for a judge. But you can keep your 21st century hat on.

None of this is to downplay the need for strong legal arguments. You must convince the judge that the law is on your side. The point is that you may have the strongest legal argument in the world, but if you don't communicate it to judges in a way that gets their attention and makes sense, you limit your chance of success.

The thanks of the AADC go out to Brett D. Watson, who has his own firm focusing on appellate practice, for writing this article.

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