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January/February 2019
Volume 48, Number 1

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Annual Holiday Wine Tasting

WCBA members celebrated the holiday season at our Annual Wine Tasting event held at Paesano's Restaurant. New Lawyers co-chairs Stephanie Garris and Jinan Hamood presented Alex Hermanowski with an appreciation award in recognition of his contributions to the New Lawyers Section. In the spirit of giving, our charity this year was Local Circles which provides resources and development in youth employment and achievement in school.

Photos courtesy of the Washtenaw County Legal News

Additional photos are available at www.washbar.org in our photo gallery.

Res Ipsa Loquitur
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Volume 48, Number 1 January/February 2019

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Official Notice

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Asked & Answered

Michael J. Garris

After graduating from Pioneer High School in 1972, I attended Western Michigan University to wrestle in college. Eventually, I transferred back to the University of Michigan and graduated in 1976. From there I attended Wayne State University Law School (I also attended Indiana University as a visiting student for my middle year) and graduated in 1979. I have been working at the Garris Law Firm since 1979, and can be reached at mjg3025@gmail.com or 734-761-7282.

What is your area of practice?
In the earlier years I tried a variety of cases, including discrimination, employment, criminal, divorce, and worker's comp cases. I also handled bankruptcies and wills, and drafted contracts. However, I have always handled personal injury cases for the injured party, and that is all I have done for the past 15 years.

What was your most interesting case?
Although I have been fortunate to handle a number of interesting cases over the years, there are two that I considered extremely challenging. In one case, I represented a tetraplegic in a third-party case against a trucking company, which settled for a record $16,000,000 for a third-party case in the State of Michigan. One of the biggest challenges was to find a qualified expert on the life expectancy of a tetraplegic so that the life care planner could assist in determining the fair amount of future medical expenses and care that my client could recover. This was one of the elements of damage since the Plaintiff was from out of state and the $500,000 cap applied to PIP benefits.
A second challenging case, which resulted in a verdict in excess of $3,000,000 involved representing a nurse who was misdiagnosed with breast cancer, due to the hospital's mix up of her biopsy slide with another patient who had cancer. My client unnecessarily underwent a partial mastectomy and was told by the hospital that the cancer had metastized, when in fact there was no cancer. This resulted in post-traumatic stress disorder. Making matters worse, the hospital terminated her when her Family Leave ran out.

What do you like to do outside the office?
Outside the office, I've coached approximately 750 games of boys and girls AAU basketball and premier travel soccer for teams over a ten-year period. Most of this involved my children as they were growing up. Although it took a lot of time, coaching was a blast. It helped me understand why teachers love their job so much.

Did you always know you wanted to be an attorney? Where did you get your law degree? Anything else interesting?
I did not decide until my third year in college at U of M that I was going to attend law school. In addition to law school, I considered becoming an orthopedic surgeon, a private investigator, and an airplane pilot (I don't know why, as I don't like heights).
I graduated from Wayne State University Law School in 1979, however, for my second year I attended Indiana University as a visiting student in Bloomington, Indiana.

What jobs did you have before you became an attorney?
I had my own landscaping business from junior high through college.

What area of the law do you like the best and why?
I enjoy the first-party and third-party motor vehicle crash cases. I find it very rewarding to help families where someone is seriously injured or has died. There are a lot of interesting issues in the PIP cases.

Tell us a little about your family.
I have three children. My son Zachary is in his third year of law school at Wayne State and is currently working at our law firm. He obtained a Masters of Divinity and was a teacher, but he later decided to change career paths and become a lawyer. My daughter Jenna graduated from Michigan State with a business degree. She and my son-in-law just moved from Illinois back to Michigan, and I now have my first grandchild. I see him often, and it warms my heart every time. My youngest daughter Kristiana also graduated from Michigan State in the field of advertising. (All my kids are true Michigan fans so I don't want you Spartys to get too excited.) She works in advertising for an up-and-coming company in Oak Park. I enjoy having my children nearby so that I can spend lots of time with them.

What would your second career choice have been if you had not become a lawyer?
Probably an orthopedic surgeon. I like to fix things, so orthopedic surgery would have been right up my alley. But as a personal injury attorney, I do get to be involved in the medical aspects of the injury cases that I handle.

Any words of wisdom to pass on to new lawyers?
If you act professionally and respectfully to opposing attorneys (and insurance adjustors), they are more inclined to pay you a reasonable amount on your case. On the flip side, if you act like a jerk, they are more likely to dig their heels in and fight you. Also, you never know who is going to become a judge whom you later will appear in front of, so treat other attorneys and opposing counsel the way you would like to be treated.

What is your favorite movie or book?
Any movie with Russell Crowe, as he is a tremendous actor. That would include *Cinderella Man*, *Master and Commander*, *Gladiator*, *Beautiful Mind*, etc.

What are some of your favorite places that you have visited?
I have been to the Greek islands on two occasions. The islands were some of the most beautiful places I have ever seen, and it is not just because I am of Greek descent.

What are your favorite local hangouts?
For lunch and pizza, you cannot beat NeoPapalis. I also enjoy restaurants that have outdoor eating areas and live music.

When you have a little extra money, where do you like to spend it?
Besides vacationing and fishing in the Florida Keys, I have been collecting old sports cards since I was a kid.

What do you like to do in your spare time? Hobbies?
I have a variety of interests. I enjoy spending family time at the family cottage during the summer. I like to trailer my boat to different lakes, go fishing in the Keys, play basketball, work out, and repair things.

Why do you choose to be a member of the WCBA? What is the greatest benefit you have enjoyed as a member?
I enjoy the camaraderie of the other attorneys and Judges in the Bar Association. Attending the various functions allows you to get to know them on a personal basis.

President's Message

The Washtenaw County Bar –

It's Where You Belong

In the tradition of the familiar year-end "Best of" and "Top Ten" lists, let's pause on the cusp of the New Year. Pause here before you find yourself deep in February wondering where January went. Pause not to create a list of resolutions, but to create a list that celebrates your successes.

This is a gift you can give yourself every year-end and it is one I always challenge my clients to give themselves. The challenge is to list 100 accomplishments from the past year - - large, small, professional, personal, measurable, immeasurable, tangible, and intangible. As you make the list, you will realize that you accomplished far more than you thought you did. And at some point in the list-making process, you will realize it is not only about the "doing," it is also about the "being."

What does it mean to also be about the "being?" Make your list of 100 accomplishments and find out. You will probably start with easy metrics and matters related to your work. Your calendar will be a useful tool. At some point you will start thinking about all of the things you did in your personal life as well. Eventually you will get to more of who you were — perhaps how you remained resilient, persevered, asserted yourself, met new people, were a friend, or deepened relationships.

I know this challenge makes many lawyers uncomfortable, especially self-described perfectionists and those who loathe self-promotion. But no one else needs to see your list. The only person possibly judging you is you.

This is a time to be proud of yourself and who you were this past year. You will see that you accomplished more than you gave yourself credit for during the year. A beautiful bonus is that at the end of it all, without having made a single resolution, you will more clearly see what you want to accomplish in 2019. You will see who and how you want to be, and how you will make that happen.

Speaking of 2019, if you do not already have one, create a success folder in Outlook or other location. Throughout the year, save appreciative emails, letters, notes, and your own reminders of your accomplishments. Successes are more than just wins, new clients, and increased revenue. Being able to remind yourself of them will help you ride out the year's inevitable valleys. Having them available at year-end will help you enjoy it all over again.

Pause as one year ends and another begins. If the Bar can better serve you in 2019, please let us know. In the meantime, congratulations on your 2018 and best wishes for a happy, healthy, and successful 2019.

Cheers from the Bar,

Elizabeth

Elizabeth C. Jolliffe

Elizabeth@yourbenchmarkcoach.com

VALUED MEMBERS: ARE YOU MAKING THE MOST OF OUR ONLINE MEMBER DIRECTORY (ACCESSIBLE TO THE PUBLIC)?

Make our website work for you! All of our members are listed in our online Member Directory (accessible to the public and searchable by area of law). Also, we are featuring WCBA members on a rotating basis in the "Meet a WCBA Attorney" section located on the right hand side of most of our pages. **Please take a few minutes to update your profile (including adding your practice areas, website address, and photo) to make the most of this feature.**

SAVE THE DATES

Annual Award Dinner & Election
Thursday, April 11th at 5:30 p.m.
Ann Arbor City Club

30th Annual Bench-Bar Conference
Friday, May 3rd at Noon
Travis Pointe Country Club

THANK YOU

to our attorney volunteers listed below who helped members of our community through our 2018 Probate Court Counseling Sessions!

The free Probate Court Counseling Sessions are held the first Wednesday of every month from 11 a.m. – 1 p.m. Attorneys volunteer for a one hour time slot. During this hour, each attorney is able to assist three members of the public with probate court issues. Each session is 20 minutes. The appointments are made on a first come, first serve basis through the probate court office.

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BANKRUPTCY BASICS FOR CONSUMERS


Gregory L. Dodd

This article is intended to answer the basic questions bankruptcy attorneys get from clients, and help lawyers from other areas of the law understand what will happen when bankruptcy intersects with another case (particularly divorce). Call any of our WCBA Bankruptcy Law Section members when your client is with you in the office, and you can usually get answers to your questions and that will make other legal matters go more smoothly.

Who qualifies to file Bankruptcy? What are the different kinds of bankruptcy? What debts will be wiped out? When will the garnishment stop? Which should be filed first: the divorce or the bankruptcy? These are some of the common questions I get in the first phone call from potential clients. Often, lawyers who are handling a client's divorce, business, or criminal matter phone me with their client in the office and ask these questions, and we work out the best path to make both matters go more smoothly for both lawyer and client. The information we collect about the client's income, expenses, assets and debts is helpful in whatever their other legal issue is. So, once I have collected this information, it prevents the client from having to provide it a second time.

Chapter 7: Chapter 7 is the most common type of bankruptcy and the one that most people want to file. All the debts are wiped out the day the case is filed. No payments are made. Most people don't lose any property, but you can lose property if you have too much. You have to pass the means testing to see if you qualify. Once we get six months' pay stubs, we run the means testing. A single person who lives alone can make about $50,000.00 per year and still pass. More income than that, the client might be forced into Chapter 13 bankruptcy and making payments.

"I don't have any property." When people tell me this, I tell them they better plan to show up in court naked. If you have clothes, you have property. This is why they have to fill out my 16-page intake sheet and make sure they review the list of examples of property and list it all. All means all. Don't leave anything out. Most clients whom I see end up keeping all of their property. But I will determine whether they stand to lose anything after I see what all their property is, and I will work with the exemptions and determine whether the client will lose anything.

"Will the bankruptcy stop the divorce?" The day the bankruptcy is filed, the divorce case must stop. But that only means the divorce court can't enter orders. You can still proceed with mediation. Chapter7 proceedings usually lasts about three months. Then you can proceed with the divorce again. But note, the courts do not notify each other when a bankruptcy is filed. The attorney handling the divorce must file a notice to the court that the bankruptcy has been filed, and ask the court to sign an order staying the divorce proceedings.

"Can two people file bankruptcy together?" Married people can file jointly. It often makes the divorce case go more smoothly if the bankruptcy is filed first, and then the debt issues are eliminated. Moreover, in getting the bankruptcy case filed, a lot of information is gathered on one or both parties' monthly income, expenses, assets and debts that is then helpful in the divorce.

"Do I have to know what all my debts are?" We will get a credit report that will be more thorough than most, but is not perfect. So if you know of any debts that are not on the credit report, we need to know about them. The credit report we get will also have addresses that creditors don't usually want you to know, so we can notify them more effectively. And the credit report will include a prediction of the client's credit score one year after filing bankruptcy. The credit score usually goes up.

Chapter 13: In Chapter 13 bankruptcy, payments are made on a portion of the debt, and the rest of the debt is wiped out. The payments are usually based on subtracting the debtor's monthly expenses from their monthly income, and the left over amount is sent to the trustee every paycheck for the length of the Plan. The Plan lasts for either three or five years. Working out the client's budget is the hard part. Most people whom I see are not wasting money so there is not much cutting to do.

"I filed bankruptcy once before. How long do I have to wait to file again?" If you filed Chapter 7 bankruptcy, you have to wait eight years before filing another Chapter 7 bankruptcy. In the meantime, after four years you can file a Chapter 13 bankruptcy. Or, I will just get the client a payment plan ordered by the State Court until the eight years are up, and then file another Chapter 7 bankruptcy.

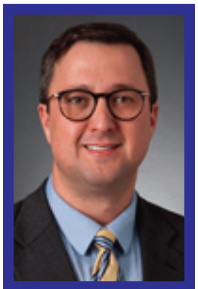
"When will the garnishment stop?" The debts are wiped out the day the bankruptcy (either type) is filed. The client's employer then has to stop honoring the garnishment order. Most employers understand this and stop the garnishment with the next paycheck. If more than $600.00 was garnished from the client's pay during the 90 days prior to the filing, the client is entitled to get the garnished money back from the creditor.

Getting the client's information together is usually the hard part. Pay stubs, the last two tax returns, car titles, bank statements, divorce judgment, retirement plan statements, lawsuit papers: these are usually the things we need to file bankruptcy. How long would it take you to get these things together? Our clients usually take a little longer. But once we do have this information, we can make their debts go away very quickly. Then the credit card companies are out of luck, and the divorce case goes more smoothly. Most cases I see, the client's credit score starts going up. I call it justice.

Gregory L. Dodd, Co-Chair of the WCBA Bankruptcy Law Section, has been filing bankruptcy cases (Chapters 7 and 13) since 1995. He currently handles only bankruptcy and divorce matters. Mr. Dodd is a former WCBA President. He can be reached at greg@gdoddlaw.com.

Five Ways to Get to the Point

Jonathan B. Koch



Trent B. Collier

You're busy. You have more work than you have time. In fact, practicing law feels a bit like running a marathon—except you're permanently stuck at mile twenty-three.

If that sounds familiar, you're not alone. Just about every practicing lawyer has the same dilemma. But here's what we too often forget: Judges face that problem, too. Tempting as it is to think of judges as beholden to no one, judges are just as busy as you are.

If you write legal briefs, that fact ought to matter—a lot. If you get to the point, the Court has a chance to consider how persuasive your argument is. If you don't get to the point, or if you delay too much along the way, the Court can't stack your argument against the opposition. So, when it comes to persuasion, the general idea is to submit a brief that's easy to follow. Eliminate as much of the judge's work as you can, and you'll be a little closer to accomplishing your clients' goals.

These aren't new ideas. We're indebted to people like Bryan Garner, Mark Cooney, and Ross Guberman for educating lawyers about better writing practices. Still, it's worthwhile to keep turning and returning to these basic ideas.

With these principles in mind, it's time to get to the point. Here are five steps you can take to make your next brief as readable and persuasive as possible.

1. Read local rules and judges' guidelines

Most judges give litigants road maps for getting to the point. So the quickest way to ensure that your arguments *won't* persuade the Court is to violate the relevant procedural rules.

The Federal Rules of Civil and Criminal Procedure govern proceedings in all of the United States district courts and provide the basic architecture for federal litigation. But the general nature of the federal rules means that they don't cover every aspect of litigation—including brief writing.

The local rules in district courts fill most of the gaps left by the federal rules. For example, the local rules clarify what information must be included in any document filed with the court and govern format and type-size. They also lay out guidelines for motion practice, such as concurrence requirements, page limits, and briefing schedules. The local rules may also require specific procedures for service, filing, case assignment (or reassignment), working with the magistrates, and a host of other things.

The practice guidelines created by individual judges are another important source of procedural rules. They can include policies and procedures on a wide range of subjects, including scheduling orders, motion practice, discovery, alternative dispute resolution, and courtesy copies. Some judges even have guidelines for specific types of cases, such as patent or ERISA litigation.

Failing to comply with the procedural requirements of the local rules or a judge's practice guidelines can have serious consequences. It may result in having your pleading or motion rejected. Even if it doesn't, non-compliance with the court's procedural requirements can still reduce your credibility.

And think about what compliance means for a busy judge. Local rules and practice guidelines tell you exactly how to present your arguments. The more you work within those rules and guidelines, the more you're presenting your clients' cases in a form that judges will find easy to work with. So knowing and following the local rules is a crucial part of ensuring that you have the chance to persuade the Court.

2. Explain why you're citing what you're citing—even for block quotes.

A legal citation can do one of two things: it can prove your point or it can create homework for the reader. That's it.

A citation proves your point by telling the reader exactly how it connects to your case. Suppose you want to prove that your opponent's argument is too speculative to establish causation for a Michigan tort claim. You could just make your argument, cite the relevant cases, and move on with your day:

Samuel George argues that PharmaCo's No-Flake shampoo turned his scalp green. He produces no empirical evidence to support that claim; the Court must rely on his word that he used No-Flake on May 8, 2016 and woke to a green scalp the next day. But George admitted at his deposition that he also used a new conditioner when he first tried No-Flake in May 2016. There's no way to tell what caused George's green scalp—No-Flake or the new conditioner. So George's claim is too speculative to survive summary judgment. *See Skinner v. Square D. Co.,* 516 N.W.2d 475, 481 (Mich. 1994).

The Court can tell that *Skinner* probably supports the idea that George's claim is too speculative. But how? Is *Skinner* a shampoo case? Does it address multiple catalysts? Is there some other reason *Skinner* helps PharmaCo? There's no way to tell from the citation. Instead of a one-two punch of fact and law, you have punchy facts with a weak left hook.

The fix is simple: Add a parenthetical or sentence that explains why you're citing *Skinner*: "*See Skinner v. Square D. Co.,* 516 N.W.2d 475, 481 (Mich. 1994) (holding that, when the defendant's product is one of two equally possible causes, the plaintiff's claim is too speculative to establish negligence)." Tell the Court why you're citing whatever you're citing.

That goes for block quotes, too. Remember Waldo? That guy who was always in a crowd? The one with red-and-white-striped clothes who wore Harry Potter glasses before they were popular? Imagine

someone gave you a *Where's Waldo* book and told you to find Waldo without telling you what Waldo looks like. You'd have a miserable task.

That, on a smaller scale, is the problem with block quotes that lack preceding explanations. Without an introduction, your reader doesn't have a search image.

Suppose you're pursuing a libel action against Ripe Limburger, a radio personality. Limburger said that your client—a low-level campaign staffer for Senate candidate Meg White—helped White raise funds illegally. Limburger made this accusation during his 5 to 6 p.m. rush-hour show. After White demanded a retraction, Limburger issued a retraction and an apology during a 3 to 4 a.m. slot. You want to establish that the retraction wasn't enough to avoid punitive damages. So you write the following:

Under MCL 600.2911, Limburger is still subject to punitive damages, despite his late-night retraction:

(b) Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his or her action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so, and proof of the publication or correction shall be admissible in evidence under a denial on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages. For libel based on a radio or television broadcast, the retraction shall be made in the same manner and at the same time of the day as the original libel; . . . .

Where's Waldo? He's in there, but the reader will find him much faster if you explain what Waldo looks like:

Under MCL 600.2911, Limburger is still subject to punitive damages, despite his late-night retraction. Section 2911 states that a defendant who defames a plaintiff on radio must offer a retraction at the same time of day as the original defamation:

(b) Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his or her action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so, . . . For libel based on a radio or television broadcast, the retraction shall be made in the same manner and at the same time of the day as the original libel. . . .

Knowing what Waldo looked like made the block quote more effective. The reader had an idea of what to look for in the statute. And you made a stronger argument by making your point twice—once before the block quote and once in the block quote. That's the idea. Don't just cite or quote authorities. Tell the Court why you're citing them.

3. Streamline your writing: shorten your sentences, use simple, direct words, and eliminate passive voice.

The goal of legal writing is to communicate your arguments in a convincing and effective way. Good legal writing accomplishes this goal with dynamic, creative prose that draws your readers in and keeps them interested. Unfortunately, many lawyers undermine their arguments with stuffy, tedious prose, poor word choice and convoluted sentences.

Here are some suggestions for improving the impact of your legal writing:

• **Avoid legalese and excessive jargon:** For most of us, our first encounter with legal writing was reading cases like *Marbury v. Madison* or *Pierson v. Post* during our first year of law school. Many of these cases contain legalisms—old-fashioned legal jargon with everyday equivalents, like *herein*, *heretofore*, *thereafter*, and *aforementioned*.[1] You don't use those words in everyday conversation (even law-related conversations). So don't use them in your writing. The same goes for obscure words meant to show off the writer's expansive vocabulary rather than make a point as clearly and directly as possible. Use one of those words and you're liable to lose an important reader: the judge.

• **Avoid unnecessary Latin:** Latin is a hallmark of old-fashioned legal writing. But, although using Latin may enhance our sense of being part of a learned profession, it doesn't enhance the clarity of our arguments. So, if there's an everyday English equivalent of your Latin phrase, go for English instead of Latin. For example, avoid using terms like *arguendo*, *ab initio*, *a fortiori*, or *inter alia*. You might still need to use terms of art like *habeas corpus*, *res ipsa loquitur,* or *nolo contendere* because they don't have English equivalents. For phrases that *do* have English equivalents, Latin is about is helpful as Klingon.

• **Don't hedge with timid or vague words:** The best legal writing is concise and direct. Yet lawyers far too frequently blunt the impact of their arguments by using timid language or unnecessary qualifications. For example, we often see phrases like "it seems" or "it would appear that" instead of "it is." This hedging may stem from a desire not to be pinned down by a judge or opposing counsel. But it can instead reveal a lack of confidence in your argument. As Bryan Garner wrote, it's "[b]etter to state matters confidently and straightforwardly."[2]

• **Use euphemisms judiciously:** We use euphemisms—*passed away* instead of *died*, *laid off* instead of *fired*—to soften the impact of something negative.[3] Euphemisms have a place in good legal writing. Sometimes. You may want to use them if, for example, you want to divert attention from your client's actions or avoid unnecessary

[1] Bryan A. Garner, Legal Writing in Plain English, 34-35 (2001).

[2] Bryan A. Garner, The Elements of Legal Style, 35 (2d ed., 2002).

[3] *Id.* at 33-34.

controversy. But, generally speaking, you should avoid euphemisms to make your legal writing as direct as possible.

• **For the sake of all that's good and holy, avoid hyperbolic language:** Although timidity and euphemisms can undermine your arguments, over-the-top hyperbole can also harm your credibility with your reader. So try to avoid words like *obviously, clearly, utterly,* or *undoubtedly*. After all, if your opponent's position is *clearly* meritless, it's better to demonstrate that through your analysis. Most judges would agree with Geddy Lee, Canada's greatest bass-playing export: show me; don't tell me.[4]

• **Avoid prepositional phrases:** Use words like *if*, *before*, *after*, and *when* rather than *in the event that*, *prior to*, *subsequent to*, and *at the time that*. The shorter words will shorten and tighten your arguments by avoiding unnecessary filler words.

You can also increase readability with short sentences. Most legal-writing experts recommend an average of between 15 and 25 words per sentence. So we'll split the difference and say you should aim for around 20 words per sentence. That's long enough to convey a complex idea, but short enough to not tire your reader out. Remember though, that an average is just that—an average. You should vary your sentence length by mixing shorter sentences with longer ones.[5] This variety, combined with the relatively short average length, will improve the speed and ease with which your reader can digest your arguments.[6]

If you're struggling to keep your average sentence length at around 20 words, there are a couple of solutions. First, limit each sentence to a single point or idea, and use no more than two clauses. Second, omit unnecessary words—never use a phrase when a single word will do. Third, organize your sentences so that the subject, verb, and object are close together.[7] That way, your reader will always be aware of the work that each sentence is doing in your brief.

You can also increase the readability of your briefs by eliminating the use of passive voice. In active-voice construction, the subject of your sentence does something.[8] In passive-voice construction, in contrast, something is done *to* the subject.[9] The problem with passive voice is that it conceals the identity of the actor, which can lead to vagueness and confusion.[10]

[4] Rush, "Show Don't Tell" from *Presto* (1989).

[5] Bryan A. Garner, The Winning Brief, 232-233 (3rd ed., 2014).

[6] Bryan A. Garner, Legal Writing in Plain English at 20-21 (2001).

[7] *Id.* at 23.

[8] *Id.* at 24-25.

[9] *Id.* at 25.

[10] Bryan A. Garner, The Elements of Legal Style, 41 (2d ed., 2002).

Spotting passive voice in your own writing can be tricky. But Bryan Garner offers a "fail-safe test" for identifying passive voice: "If you see a *be*-verb (such as *is, are, was,* or *were*) followed by a past participle (usually a verb ending in *-ed*), you have a passive-voice construction."[11]

In an ideal world, we would all have plenty of time to edit our briefs to eliminate passive voice. But, in a world of imminent deadlines and hourly budgets, that isn't always the case. One way to save time and effort but still eliminate passive voice in your writing is to have your computer do some of the work for you. Almost every major word processing software system can be configured to highlight passive-voice construction.

4. Account for the weight of authority.

We haven't done an empirical analysis of this next point but we're willing to stick our necks out a bit. When a judge is evaluating your case, she has one primary goal: to get it right as quickly as possible. (Picture Tom Cruise's "help *me* help *you*" scene in *Jerry Maguire.* That's the idea.)

You can only help your judge if you provide precedential authority. The most eloquent argument isn't worth a lima bean if it doesn't address the controlling authority. So that's one of your primary tasks as an advocate: to give the judge the best authority with as little fuss as possible.

That means you need to think a lot about the weight of your authority. When you're litigating a state-law case in federal courts, remember the *Erie* doctrine: Federal courts have to follow a state's high courts on matters of state law. Everything else is a guess. Intermediate state courts might be helpful to courts in making that guess, but they're not authoritative. Citing only intermediate state courts is one way to tell the court that there's no Supreme Court precedent. It's also a good way to tell the court that you didn't bother looking for the controlling precedent. That's probably not a message you want to send.

State courts have their own version of this problem. You may have found an unpublished case with similar facts within two minutes of starting legal research. But popping that unpublished case into your brief isn't going to help your judge. She still has to figure out what the *controlling* law is. If you cite nothing but an unpublished case, you've just made the judge do your homework for you.

What about string cites? Don't judges love it when you give them, say, five cases for a single point of law? Well, no. You've just clogged up your brief with unnecessary authority. And if you don't explain why you're citing so many cases, you've created even more homework.

So think of legal citations like pie. If a dinner guest volunteers to make dessert and brings one pie to serve four people, that's a considerate guest. If a dinner guest volunteers to make dessert and brings

[11] Bryan A. Garner, Legal Writing in Plain English, 25 (2001).

seven pies for four people, that's a guest with serious judgment issues.

5. Attack arguments, not people.

Here's the final tip: You should attack *arguments,* not people.

In a sense, this point concerns legal ethics. Both the Eastern and Western Districts of Michigan require that attorneys follow civility principles. Attacking people—calling your opponent names—is hardly consistent with those principles. But civility isn't just about ethics; it helps ensure good writing, too.

> "Although timidity and euphemisms can undermine your arguments, over-the-top hyperbole can also harm your credibility with your reader."

Don't take our word for it. In *Bennett v. State Farm Mutual Automobile Insurance,* the Sixth Circuit Court of Appeals explained how personal attacks lead to ineffective advocacy.[12] The defendant in *Bennett* called the plaintiff's argument "ridiculous." The Court of Appeals noted that this charge was inconsistent with civility principles. And its problems went beyond that. "Hyperbole" and "overstatement," the Court explained, "will only push the reader away."[13] Even if there's good reason to deride an opponent's argument as "ridiculous," "the better practice is usually to lay out the facts and let the court reach its own conclusions."[14]

Don't believe us? Think your opposing counsel really deserves some comeuppance? Fine. Which one of these paragraphs would you rather read?

Option 1: Dr. Kermit asserts that he's entitled to summary disposition because, in his view, the medical records establish that Gonzo was already in septic shock by the time she arrived at St. Rolf's Hospital. But Dr. Link—Dr. Kermit's own standard-of-care expert—testified that those records show sepsis, not septic shock. And Dr. Link testified that Gonzo's sepsis was easily reversible had Dr. Kermit taken the appropriate steps within three of five hours of Gonzo's admission.

Option 2: Dr. Kermit asserts that he's entitled to summary disposition because, in his view, the medical records establish that Gonzo was already in septic shock by the time she arrived at St. Rolf's Hospital. That argument is completely disingenuous. Dr. Kermit is purposefully misrepresenting Gonzo's medical records in an attempt to mislead the court. In fact, contrary to Dr. Kermit's misrepresentations, Gonzo's medical records show that she was in sepsis, not septic shock. And Dr. Kermit's argument *conveniently* overlooks the testimony of his own expert, Dr. Link, who admitted that Gonzo's sepsis would have been reversible had Dr. Kermit taken the appropriate steps within three to five hours of Gonzo's admission. The Court should reject Dr. Kermit's argument and sanction his attorney for his malicious attempt to mislead the court.

Option 1 does all the work of Option 2—but without the soul-sucking nastiness. If you had a case call to run in an hour, three rulings to finish by the end of the day, and a lunchtime conference with the chief judge, you'd probably choose Option 1.

If you picked Option 2, you may have missed your calling in politics.

Conclusion

You'd be forgiven for thinking that this article is awfully long, considering that it's about getting to the point. But the fact is that there's a lot to say about effective legal-writing because lawyers are so good at turning simple points into complicated ones. Battling the forces that muddy writing can be a lifelong endeavor. If nothing else, we hope we've convinced you that this battle is worth fighting—and that judges might appreciate the effort.

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[12] *Bennett v State Farm Mut Auto Ins Co,* 731 F3d 584, 584-85 (6th Cir. 2013).

[13] *Id.* at 585.

[14] *Id.*

Member Notes

Bodman PLC is pleased to announce that **Justin P. Bagdady**, a member of the firm based in the Ann Arbor office, has been elected to the Board of Directors of the United Way of Washtenaw County (UWWC). Before joining the board of directors, Bagdady served for two years as a member of the audit committee for UWWC. Bagdady is a member of Bodman's Litigation and Alternative Dispute Resolution and Intellectual Property practice groups. He assists companies and their executives in commercial litigation disputes, intellectual property and brand protection counseling and litigation, and when faced with regulatory investigations or enforcement actions.

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Jennifer L. Lawrence is pleased to announce the opening of The Law Office of **Jennifer Lawrence PLLC**, a family law, estate planning and general practice firm. The firm is located at 4844 Jackson Road, Suite 204, Ann Arbor, MI, 48103. Jennifer will continue to provide services to residents of Washtenaw and surrounding counties including parenting coordination, divorce and custody disputes, protection orders, guardianships and estate planning. You can contact the firm at *734-223-5528* or *jen@jlawlegal.com.*

Thank You

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