Opening Class with Panache, Professionalism Pointers, and a Pinch of Humor

By Almas Khan

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Multivariable Calculus. The very title of my first class as a college freshman invited repulsion. The course description was no more enticing, referring to such abstruse concepts as optimization; vector fields, curl, and divergence; and Green’s theorem. This seemingly inauspicious list of topics led me to envision sessions taught by a professor preoccupied with demonstrating complex proofs beyond my ken, and I entered the classroom on the first day ardently wishing that it was the last.

At precisely 10 a.m., the professor leapt from behind the lectern and proclaimed: “Let’s begin with some fun facts!” Multivariable calculus—fun? Now I was perplexed, but for a different reason than I had anticipated. As the semester progressed and the professor continued to showcase “fun facts,” which were often fascinating practical applications of the assigned theoretical topics for the day, he helped demystify the subject for me. Indeed, I became as infatuated with multivariable calculus as the professor, poring over proofs with lights ablaze at 3 a.m., and The Beatles chiding me with “I Should Have Known Better” over the radio.

Many of us legal writing professors hope to instill a similar passion for legal writing in our students. And while few of them will likely undergo an epiphany like mine during their legal writing courses, I have found that opening class with the legal equivalent of “fun facts” about the subjects to be covered that day captures students’ attention, especially for intimidating topics or topics that may appear irrelevant to a first-year legal writing student with the same frame of mind I had about multivariable calculus before taking the class.

While teaching introductory legal writing, I have tested various materials as openers, which can be humorous but should serve a substantial pedagogical purpose, such as inculcating professionalism before students enroll in a legal ethics course. My openers are frequently extracts from judicial opinions, as other law professors have catalogued cases in which courts reprimanded attorneys for their unprofessionalism. However, surveys, videos, and newspaper articles have proven equally fruitful, and I accordingly cite a multitude of sources for openers under the 10 headings below, which reflect subjects taught in a typical first-year legal writing course. Readers inclined to seek other sources for openers may browse the Internet or consult a reference guide, as this article provides only a sampler from the universe of instructive materials.

The Importance of Legal Writing

This self-evident proposition to legal writing professors may bounce, Teflon-like, off first-year law students habituated by crime procedurals to believe that rousing courtroom oratory wins most cases. To underscore written communication’s preeminence in the age of the so-called vanishing trial—and, I might...
To demonstrate the consequences of neglecting to update research, I play an O.J. Simpson trial clip in which Judge Lance Ito chastised prosecutor Marcia Clark for not "Shephardizing" after the judge's student clerks uncovered relevant cases Clark had apparently not encountered during her research. 13 Deficient legal research by both parties has even culminated in erroneous court rulings, inciting judicial ire, 14 especially since these decisions, if published, may be binding in future cases. 15 Other harms from woefully unsupported cases include justice delayed.
for litigants with meritorious claims and an undermining of public confidence in the judiciary.\textsuperscript{20}

Legal Analysis

Numerous cases emphasize the integrality of sound legal analysis to effective lawyering, and space regretfully permits me to only discuss three hilarious favorites with a serious underlying message here: that attorneys overlook defective legal analysis at their own peril and their clients’ and the public’s expense.\textsuperscript{21} The first case, a breach of contract action, arose when a boy who lost a spelling bee for misspelling a word claimed that contest officials violated contest rules by allowing the winner to compete, and accordingly defeat him. The court nearly sanctioned the attorney for filing a suit bereft of “causation and common sense.”\textsuperscript{22}

In a more recent bankruptcy case, the judge denied the “Defendant’s Motion to Discharge Response to Plaintiff’s Response to Defendant’s Response Opposing Objection to Discharge” based on its incomprehensibility, writing that the court was unable to “determine the substance, if any, of the Defendant’s legal argument” or “ascertain the relief that the Defendant is requesting”;\textsuperscript{23} judges have refused to be mind readers or do counsel’s work, expecting a comprehensible presentation of arguments.\textsuperscript{24} Finally, a classic opinion stresses the significance of devising compelling analogies and distinctions.\textsuperscript{25} It reads in full: “The appellant has attempted to distinguish the factual situation in this case from that in Renfroe [citation omitted]. He didn’t. We couldn’t. Affirmed. Costs to appellee.”\textsuperscript{26}

Legal Citations

Students often express an aversion to learning The Bluebook (“won’t my paralegal do that for me?”), but examples of attorneys chastised—and occasionally fined—by judges pique class interest in the subject. In one case, an appellate court fined a law firm $750 for incorrect citations and missing pincites in its “laissez-faire” brief,\textsuperscript{27} while a single incorrect case citation cost an attorney $100 in a more recent case.\textsuperscript{28} Another judge ordered parties to resubmit dispositive motions, “which must include thorough legal analyses of their positions with relevant case law and properly bluebooked case citations.”\textsuperscript{29}

Legal Writing Style

While the Plain English movement pioneered by David Mellinkoff has existed for nearly half a century,\textsuperscript{30} needless jargon continues to permeate legal discourse;\textsuperscript{31} a former student informed me that his firm used obfuscatory prose to confound nonlegal readers. Additionally, law students often read landmark opinions composed in an antiquated

\textsuperscript{19} \textit{Pierotti v. Torian}, 96 Cal. Rptr. 2d 553, 566 (Ct. App. 2000).


\textsuperscript{21} See \textit{Pierotti}, 96 Cal. Rptr. 2d at 566 (estimating the cost of processing an average civil appeal in California as nearly $6,000 in 1992 and conjecturing that costs had risen since then).

\textsuperscript{22} \textit{McDonald v. John P. Scripps Newspaper}, 210 Cal. App. 3d 100, 102 (Ct. App. 1989). The complete opinion is well worth perusing as a pleasant diversion from grading papers, as is a more famous opinion by disgraced former federal judge Samuel Kent, \textit{Bradshaw v. Unity Marine Corp.}, 147 F. Supp. 2d 668 (S.D. Tex. 2001) (describing the court's independent romp through a maritime case after reviewing counsel's atrocious submissions). See also Brenda Sapino Jeffreys, \textit{Former Judge Samuel B. Kent Sentenced to 33 Months in Prison}, Texas Lawyer (May 11, 2009), http://www.law.com/jsip/tx/PubArticleTX.jsp?id=1202430610099&return=1&bblogin=1.

\textsuperscript{23} \textit{In re King}, No. 05-56485-C, 2006 WL 581256, at *1 (Bankr. W.D. Tex. Feb. 21, 2006). The order is famous for its Billy Madison footnote, which quotes from the movie: “Mr. Madison, what you’ve just said is one of the most insanely idiotic things I’ve ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.” Id. n.1.

\textsuperscript{24} \textit{United States v. Zannino}, 895 F.2d 1, 17 (1st Cir. 1980).


\textsuperscript{26} Id. at 290.

\textsuperscript{27} \textit{The Bluebook: A Uniform System of Citation} (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).


\textsuperscript{31} David Mellinkoff’s influential \textit{Language of the Law} was published in 1963.

\textsuperscript{32} \textit{Ind. Lumbermens Mut. Ins. Co. v. Reinsurance Results, Inc.}, 513 F.3d 652, 658 (7th Cir. 2008).
style and imitate the judges who drafted those opinions. Other students perceive that style in writing is a mere nicety or abhor the revision process. However, once they see an apparently irate judge's redlining of a denied motion and the judge's order that the chastened attorney "personally hand deliver" the notated motion and attendant order to his client, they appreciate my thorough virtual redlining of their papers. Other cases in which judges excoriated attorneys for not carefully editing their submissions or filing verbose documents with more volume than efficacy vividly illustrate that writing style is not the metaphorical cherry atop the ice cream. Unfortunately, judges, legislators, and contract drafters are not immune from committing stylistic errors with possibly grave ramifications.

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Ethics in Advocacy

Overzealous or unscrupulous lawyers who violate ethical codes governing attorney conduct may endanger their clients’ causes and their professional reputations; judges have sternly rebuked and often even sanctioned counsel for misstating facts from the record, mischaracterizing precedents, failing to cite controlling directly adverse authority, and plagiarizing among a host of other ethical infractions.

Briefs

Legal briefs can be anything but brief, and writing them can induce ennui at times, so to inject some levity into the discussion of briefs and highlight that writing them can be a creative venture, I project a “rapping reply brief” by a jazz musician who won his appellate case as a pro se litigant. Conversely, and less amusingly, a federal judge found a lawyer's trial brief so abysmal that he ordered the lawyer to show cause why Rule 11 sanctions should not be imposed and to bring a supervising judge to court “to discuss the poor quality of [the] brief in terms of content, organization,” and the omission of necessary issues.


34 I use the “track changes” feature in Microsoft Word to grade papers.

35 See, e.g., United States v. Devine, 787 F.2d 1086, 1089 (7th Cir. 1986) (noting the irony of expecting a judge to “dutifully comb” through a submission ostensibly not worth the author's time to revise).


41 See, e.g., Precision Specialty Metals, Inc. v. United States, 315 F.3d 1346, 1347 (Fed. Cir. 2003).

42 See, e.g., In re Thonert, 733 N.E.2d 932, 934 (Ind. 2000).


46 Hernandez v. N.Y. City Law Dept. Corp. Counsel, 1997 WL 27047, at *4 n.11 (S.D.N.Y. 1997). In another case, the court castigated both parties’ briefs (resubmitted after the court’s initial rejection) for frustrating instead of facilitating the court’s discovery of the truth and fined each party’s counsel $1,000. Latram Corp. v. Cambridge Wire Cloth Co., 919 F.2d 1579, 1584–85 (Fed. Cir. 1990).
Noncompliance with appellate rules may merit another deleterious judicial response—dismissal. Typographical shenanigans to evade page limitations particularly vex judges. One judge reduced an attorney's requested fees by $154,000 for "slip-shod submissions," emphasizing that documents submitted to a court should be professional products. If they fail to meet this standard, suspension may be warranted; one attorney was suspended for at least six months after filing incomprehensible briefs over a seven-year period.

**Oral Argument**
Most students understand oral argument's crucial role in advocacy, but their apprehension about public speaking may impede their eloquence. To boost my class's confidence, I play a short clip from an appalling oral argument in a Seventh Circuit criminal case.

**Untimely Submissions**
I enforce a stringent policy on late legal writing submissions, as courts can be draconian in their response to attorneys who flout filing deadlines. To justify my policy, I cite a case in which a client may have lost $1 million when its firm filed a motion one minute late after being stymied by Southern California traffic.

Computer failure is another proffered excuse that judges have unsympathetically rejected. And if the applicable statute of limitations has expired in the interim, an attorney may face a malpractice claim or disciplinary proceedings.

**Miscellaneous Sources**
The “sushi memo,” a mockery of the traditional legal memorandum, is a light-hearted source, as is a motion to compel an attorney to drop his accent. Finally, Chief Justice John Roberts's recent tribute to Justice Ruth Bader Ginsburg's work ethic and precise legal writing reminds students that even the finest legal writers continuously strive to refine their craft. Indeed, self-improvement may help attorneys avoid court-ordered enrollment in (horror of horrors!) a remedial legal writing class.

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50 In re Stepperson, 674 A.2d 1273, 1274–75 (Vt. 1994).

51 Students unconvinced of oral argument's importance may be directed to the following article: Joseph W. Hatchett & Robert J. Telfer III, The Importance of Appellate Oral Argument, 33 Stetson L. Rev. 139, 141 (2003).


53 Peter Lattman, Firm's Late Motion Filing (By a Minute) Proves Costly, Wall Street Journal, Jan. 9, 2008, at B9.

54 See, e.g., Martinelli v. Farm-Rite, Inc., 785 A.2d 33, 33 (N.J. Super. Ct. App. Div. 2001). Defense counsel claimed that his computer diary had failed to pick up the 30-day time frame in which to appeal an arbitration award. Id.


60 See, e.g., In re Hawkins, 502 N.W.2d 770, 772 (Minn. 1993).