

Your Written Work: Capturing the Judge's Attention— Part II



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Whenever you can shorten a sentence, do. And one always can. The best sentence? The shortest. —Gustave Flaubert

My last column covered structural aids such as summaries, headings, and chronologies to capture the judge's attention and highlight your most important points. I promised to put some meat on those bones with this column. Italian economist Vilfredo Pareto proposed that 20 percent of the effort produces 80 percent of the results. So I am only going to cover two points: voice and word choice.

USE ACTIVE VOICE

Active voice brings the reader into the action. There is a difference between "The man was bitten by the dog" and "The dog bit the man."

Which has more punch—more power?

Passive: The stop sign was ignored by the defendant.

Active: The defendant did not stop at the stop sign.

Passive: Smith v. Jones was omitted by the plaintiff in his brief.

Active: The plaintiff failed to cite Smith v. Jones.

WORD CHOICE

I once read a passage that illustrates the power of words in an extreme example: "Before the death camps, before the SS, and before the Nazis, all Hitler had were words." The words we choose make a difference.

After spending three years of our

lives—and a lot of money—at law school, we want to "sound" like lawyers. I know I did. Getting back to plain language was an unlearning process for me. However, some lawyers still pride themselves on using obscure vocabulary. The test of whether to use a word in court, or in writing, is whether or not you use that word in the real world. I never ask my wife if we are going to dinner "prior" or "subsequent" to the movie. I have never read a brief with "before" and "after" and thought to myself, "Gee, how unprofessional, don't they know 'prior' and 'subsequent'?"

Mark Twain said the difference between the right word and the almost right word is the difference between lightning and the lightning bug. Let's take "know" versus "aware." In the real world, we "know" things. However, in court, people who used to "know" things in the real world suddenly become "aware" of the same things. "Know" is a more powerful word than "aware."

Two books can help every lawyer with word choice. The first is *Blink: The Power of Thinking Without Thinking* by Malcolm Gladwell. The second is *Words That Work: It's Not What You Say, It's What People Hear* by pollster Dr. Frank Luntz.

In *Blink*, Gladwell looks at how words affect our actions through the principle of priming. One experiment involved a very quick scrambled-sentence test where you had to eliminate one word so the sentence made sense. The type of words to be eliminated given to the first group were "bold," "rude," and "disturb." The second group had to throw out words like "respect," "polite," and "considerate."

Both groups were instructed to return the tests to the test administrator. As the test takers came down the hallway, they found the administrator's colleague standing in the office doorway chatting with the administrator. The first group interrupted within about five minutes. The second group? The time limit for the test was 10 minutes. The majority never interrupted. They just stood there politely holding their test—and, as Gladwell quotes the experimenter, "These were New Yorkers!"

The second book concentrates on word choice. For example, Exxon is no longer in the "oil drilling business"; it is in the "energy exploration business." Las Vegas is no longer the seat of the "gambling" industry, but rather the "gaming" industry. Corporate America certainly knows the power of the best words.

I once gave a speech to a group of high school students about the dangers of drunk driving. I used the word "accident." A member of Mothers Against Drunk Driving came up afterward and, very politely, urged me to adopt the term "avoidable crash."

The words we choose make a big difference to the reader.

If I still haven't convinced you, let me try one more test:

"Ishmael is the name I should be called."

"The name I wish to be called by is Ishmael."

"My moniker is Ishmael."

"Call me Ishmael."

See what I mean? Herman Melville did. **L**