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Trading in the Marketplace of Ideas: Letters-to-the-Editor and Op-Ed Articles (Part I)

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**Trading In the Marketplace of Ideas:
Letters-to-the-Editor and Op-Ed Articles (Part I)**

By Douglas E. Abrams *

First Amendment values, Justice Oliver Wendell Holmes wrote in 1919, depend on “free trade in ideas.”¹ “[T]he best test of truth,” he explained, “is the power of the thought to get itself accepted in the competition of the market.”² The provocative “marketplace of ideas” metaphor echoed Thomas Jefferson, whose First Inaugural Address had assured Americans that “error of opinion may be tolerated where reason is left free to combat it.”³

The marketplace of ideas depends on active participants willing and able to spend “capital” -- their written and spoken words – to help sustain vigorous public dialog. With their educational achievement and their professional and personal status as community leaders, lawyers have the wherewithal to make distinctive contributions to what Justice Louis D. Brandeis called the marketplace’s “processes of education.”⁴ When lawyers write or speak, people listen, respond, agree or disagree, and sometimes even disparage.

Lawyers can contribute to the bustling marketplace of ideas by publishing letters-to-the-editor or op-ed articles (longer essays appearing “opposite the editorial page”) in local, regional or national newspapers. The next few pages open a two-part discussion of how to do it. The discussion draws from my own experiences submitting letters and op-eds for more than twenty years, sometimes published and sometimes rejected. This Part I concerns initial strategies and preparations. In the next issue of *Precedent*, Part II will treat writing, polishing and submission.

THE HERITAGE OF LAWYERS' JOURNALISM

Lawyers' letters-to-the-editor and op-ed articles enjoy a rich pedigree dating from the founding of the nation, when "entry into publishing was relatively inexpensive" and newspapers held a virtual monopoly on written political commentary not committed to books or pamphlets.⁵ Beginning in 1767, for example, lawyer John Dickinson wrote a series of lengthy *Letters From a Farmer in Pennsylvania*, lucid arguments for American liberty that appeared first in the *Pennsylvania Chronicle* before being reprinted in all but four colonial newspapers.⁶ The *Federalist Papers* – written by lawyers Alexander Hamilton, James Madison and John Jay in strong support of the Constitution – first appeared as a series of full-length articles in several New York newspapers as the thirteen states considered ratification beginning in 1787.⁷

The Missouri Bar and its predecessor, the Missouri Bar Association, have long urged lawyers to write for newspapers. In 1931, for example, the *Missouri Bar Journal* (the forerunner of the *Journal of the Missouri Bar*) editorialized that "members of the bar might perform [a] . . . valuable public service in discussing for publication in the newspapers the legal implications of current news events, . . . with a freedom from technical verbiage and legalistic phrasing."⁸ A year later, the *Missouri Bar Journal* advised that writing "newspaper articles concerning the law as it touches the lives or ordinary people . . . is an assured way to affect public relations favorably."⁹

In recent years, Missouri Bar leaders have stressed that when lawyers write for newspapers, they nourish "an informed citizenry"¹⁰ and "make a difference in others' lives."¹¹ Missouri's voices have not spoken alone. In 1996, American Bar Association President Roberta Cooper Ramo called on members to write "fair and informative letters to the editor."¹² State bar associations and other commentators regularly urge lawyers to pen letters and op-ed articles in the exercise of their

professional responsibility.¹³

THE LAWYER'S ROADMAP FOR NEWSPAPER WRITING

Like other legal writing, newspaper writing is an art. Here is a roadmap for lawyers who wish to publish letters-to-the-editor or op-ed articles. The roadmap begins below and concludes in the next issue of *Precedent*:

1. *Letter or op-ed?* The first step is to determine which forum better suits the lawyer's message. Letters generally respond to a previous editorial, article, letter or op-ed. An op-ed article is more appropriate when the writer comments directly rather than by response.¹⁴

A letter may be the lawyer's sole option where the newspaper does not publish unsolicited op-eds, but relies exclusively on syndicated editorial columnists and its employed staff. Even in papers that publish unsolicited op-eds, however, lawyers may stand a better chance with a letter because a half dozen or more letters appear for every op-ed. Some smaller papers publish most well-written letters they receive, though competition for space is fiercer in larger papers.

The permissible scope of letters-to-the-editor is broad but not limitless. The *St. Louis Post-Dispatch*, for example, is typical of papers that do not publish "form letters, open letters or poetry."¹⁵ The *Daily Oklahoman* also does not publish "Most consumer complaints . . . Most 'thank you' letters . . . Letters written for a class assignment or as part of an organized letter-writing campaign . . . [or] Letters written in an overly informal 'chat room' style."¹⁶ Many papers do not publish anonymous letters, ones signed only with initials or pseudonyms, or ones with multiple signatories. To encourage wide participation, some papers limit writers to one letter, say, every 30 or 60 days.¹⁷

The decision whether to write a letter or an op-ed article may be influenced partly by the lawyer's topic and purpose. Newspapers generally set the maximum length of letters at about one-

third the maximum length of op-eds, about 200 words vs. about 600 words. For writers seeking to make a discrete point, shorter letters may attract more readers than longer op-eds. For topics that need more room for explanation and development, however, an op-ed article may be the better choice. An op-ed may also cast the writer as an expert because newspapers normally expect and disclose credentials related to the article; unless the letter writer's title or affiliation appears below the letter, the writer appears only as a reader of the paper because expertise is normally not a criterion for publication.

2. *The wide range of topics.* Lawyers, of course, can write letters or op-ed articles about legal doctrine central to important public policy questions or recent court decisions. Lawyers can also write about other public issues, such as school bond issues, foster care funding, prison construction, and the like. Finally, lawyers sometimes write about matters having nothing directly to do with law or public policy, as I often do when I write about sportsmanship and similar ethical issues I have experienced for years as a youth-league ice hockey coach.

3. *Keep pace with the news cycle.* Deadlines dominate law practice, so lawyers can appreciate how swiftly the news cycle moves in the Internet/cable television age. The *New York Times* advises that letters-to-the-editor and op-ed articles “about an especially timely topic often appear within a day or two (and almost always within a week).”¹⁸

Some newspapers periodically run general essays on their editorial pages, but writers stand the best chance of publishing a letter or op-ed that relates to a specifically identified event. The event may be one the paper itself has covered, or it may be one still not widely reported (such as a newly released survey or study) that would interest readers, including the editors. Identify the event because editorial staffers wanting to do a fact-check may not recall the contents of every page recently

published in their paper.

If the newspaper runs only a few letters or op-ed articles about a particular topic, publication may favor the swift. Where the paper permits, email the submission, either in a main text message (without attachments) to the address on the paper's website, or by completing the website's form. Faxing is also swift (though it requires retyping at the receiving end), but sending a hard copy by ordinary mail may leave the submission stale before the paper's editorial staff ever sees it. Do not overwhelm the editorial staff by submitting the letter or op-ed by more than one of these three methods.

4. *When possible, anticipate.* Remember Carly Simon's 1971 hit song, "Anticipation," which opens with "We can never know about the days to come / But we think about them anyway"? If the letter or op-ed writer striving to stay ahead of the swift news cycle plans to comment generally on the sort of incident whose future occurrence is predictable (such as violent crime or heroic rescue), the writer may indeed anticipate "the days to come" by drafting much of the piece in advance.

When a violent crime or an heroic rescue hits the news, have the draft and the target paper's email address or fax number ready, fill in the details about the incident, and dispatch the polished submission quickly.

5. *Local, regional or national?* The Internet now enables people to read newspapers published anywhere in the country. Many local and regional papers still run letters-to-the-editor only from readers within their market area, but other papers publish quality letters regardless of where the writer sits.¹⁹ Missouri writers may have an advantage with papers anywhere in the state, particularly with a letter that concerns an issue holding statewide or national importance.

Op-ed writers may also enjoy wide access to the editorial pages. If the topic is local or regional, the writer should confine submissions to local or regional papers. A local Missouri school budget vote, for example, may fuel spirited discussion within the school district, but will not interest anyone in Spokane or Boise. If the topic concerns a national issue such as military preparedness, however, newspapers of all sizes from coast to coast offer potential op-ed forums.

Unless a newspaper's website recites its ground rules, the writer may not know whether the op-ed article stands a chance with a newspaper the writer has never seen. Some papers publish op-eds only from nationally syndicated columnists, or from their employed columnists. On the other hand, some larger papers welcome unsolicited op-ed submissions from distant states to diversify the editorial page by showing wide appeal.

Some local and regional newspapers may prefer, or even restrict consideration to, unsolicited op-ed submissions from writers within their market area.²⁰ With these papers, however, the "Missouri advantage" may affect the calculus. As with letters-to-the-editor, Missouri writers discussing statewide or national issues may hold an advantage with papers anywhere in the state.

Writers probably know the names of their own nearby newspapers, and websites can provide the names and addresses of papers elsewhere. For links to national and state papers, just Google "national newspapers" or, for example, "Missouri newspapers." As of this writing, a convenient site with links to the nation's leading papers is *100 Top US Newspapers By Circulation*: <http://www.thepaperboy.com/usa-top-100-newspapers.cfm>.

6. *Multiple submissions or exclusivity?* Writing letters-to-the-editor or op-ed articles is a lot like going fishing. The manuscript is the bait, and the writer aims to catch at least one fish. A basic strategic question is how wide to cast the net.

When I write an op-ed about a topic of general interest or one that has received wide media coverage, I may submit it to fifty or more papers nationally, hoping to be published in four or five. Multiple submissions remain ethical where the writer does not promise exclusive rights.

On their websites, however, many newspapers insist on exclusive rights to letters or op-eds, at least within their market area. The market area may mean a radius of a hundred miles or so, which may contain few competing papers anyway. For larger papers, the market area may cross state lines. For some leading national newspapers (such as the *New York Times*, the *Los Angeles Times* and the *Wall Street Journal*), and for newspapers that may syndicate the op-ed articles they publish, the market area may be national.²¹

Exclusivity requirements may clash with the news cycle's swiftness. Submit an op-ed exclusively to the *New York Times* or the *Wall Street Journal*, and the editorial staffs promise a decision on publication within ten days to two weeks.²² Given the overwhelming volume of submissions the *Times* and *Journal* receive each week, the answer is likely to be negative. By that time, the news cycle may have passed and well-regarded local or regional papers will not entertain the now-stale piece.

Writers wrestling with exclusivity must decide how high they want to fly, and whether to tempt the fate of Icarus, who flew too close to the sun with wax wings in Greek mythology and crashed into the sea. The decision must be made before submitting the piece. If the writer submits a letter or op-ed article to twenty papers and a leading paper requiring exclusivity calls to verify, it is too late to offer to withdraw the piece from the others because the paper requiring exclusivity cannot be sure that all withdrawals will be successful.

Aware that the news cycle quickly inters much yet-unpublished editorial writing, some

writers press their own deadline of only a few days (“I am submitting this article exclusively to the *Daily Bugle*, and I will not submit it elsewhere until April 10.”). The writer lives dangerously as the newspaper chooses whether to accede.

Writers who heed exclusivity requirements should say so above the letter-to-the-editor or in the cover letter accompanying the op-ed. Editorial staffs may assume that writers have read their website, and thus that silence about exclusivity means multiple submissions. Facing tight daily deadlines, the staff member may find rejection easier than calling to ask.

If the writer submits a letter or op-ed to only one paper that does not require exclusivity, mention exclusivity anyway. The editors may appreciate the desire to appear in their paper, and appreciation might help tilt the scales in favor of publication.

* * *

With these initial strategies and preparations settled, a lawyer approaching the marketplace of ideas with a letter-to-the-editor or op-ed article can turn to writing, polishing and submitting the work, the subjects of Part II next time.

Next article: *Trading In the Marketplace of Ideas: Letters-to-the-Editor and Op-Ed Articles (Part II)*.

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ENDNOTES

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2. *Id.* See also, e.g., *Davenport v. Washington Educ. Ass'n*, 127 S. Ct. 2372, 2381 (2007) (relating the marketplace of ideas to a First Amendment challenge).
3. Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), <http://www.yale.edu/lawweb/avalon/presiden/inaug/jefinau1.htm>.
4. *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring), overruled in part on other grounds, *Brandenburg v. Ohio*, 395 U.S. 444 (1968).
5. *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 251 (1974).
6. Robert Middlekauff, *The Glorious Cause* 155 (1982).
7. *The Federalist* xiii (Jacob E. Cook ed., 1961).
8. *Better Publicity*, 2 Mo. B.J. 11, 11 (June 1931) (editorial).
9. *Lawyers Prepare For Group Advertising*, 3 Mo. B.J. 123, 124 (Aug. 1932).
10. Keith A. Birkes, *An Informed Citizenry. . . .*," 1 Precedent 5 (Fall 2007).
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14. Op-Ed Guidelines for The Wall Street Journal, <http://www.opinionjournal.com/guidelines>.
15. St. Louis Post-Dispatch, How to Write a Letter to the Editor, <http://www.stltoday.com/stltoday/news/stories.nsf/editorialcommentary/story/F435718CCC4D7D3D8625727B0078D131?OpenDocument>. See also, e.g., Dallas Morning News, Opinion, <http://www.dallasnews.com/cgi-bin/lettertoed.cgi>.
16. Daily Oklahoman, Send a Letter, <http://newsok.com/opinions/>
17. St. Louis Post-Dispatch, How to Write a Letter to the Editor, supra note 15.
18. Thomas Feyer, The Letters Editor and the Reader: Our Compact, Updated, N.Y. Times, May 23, 2004, § 4, at 10.
19. Arkansas Democrat-Gazette, Letters to the Editor, <http://www2.arkansasonline.com/contact/voicesform/>. (accepts only letters from Arkansas residents); Michael Pravica, This Is the Year to Speak Up, Christian Sci. Mon., July 1, 2004, at 18 (commentary by writer who estimates that he has published at least 275 letters in newspapers in the U.S. and around the world).
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