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Recommended Citation

Douglas E. Abrams, *The Right to a Reader*, 1 *Precedent* 38 (2007).

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School of Law

University of Missouri – Columbia



Legal Studies Research Paper Series
Research Paper No. 2007-10

The Right to a Reader

Douglas E. Abrams

Published in the Winter 2007 issue of *Precedent*, the quarterly magazine of the Missouri Bar: <http://members.mobar.org/pdfs/precedent/feb-07.pdf> (pages 38-39)

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The Right To a Reader

by Douglas E. Abrams *

People sometimes say that writing is difficult enough as it is, but that writing about writing is even more difficult because it shines the spotlight on someone presumptuous enough to lecture others. A daunting task, but one I undertake enthusiastically because lawyers thrive on communication, with so much accomplished through the written word.

Law is a literary profession. Briefs, motion papers and transactional documents dominate client representation; judges speak through written opinions; and lawyers draft legislation, administrative regulations and other government documents. Lawyers and judges write treatises, law journal articles, and continuing legal education materials. Lawyers also discuss important policy questions in magazine articles, newspaper columns and Internet postings. Some lawyers even write novels or screenplays about law.

In all its versatility, writing is a two-way street, with the writer on one side and readers on the other. Writers communicate best when we recognize that just because we put something on paper does not necessarily mean that people will read it, wholly or even in large part. When writers pick up the pen or turn on the computer, we must earn the “right to a reader.”

“MEASURED BREVITY”

Writers earn the right to a reader by encouraging communication free from avoidable barriers to understanding. Future columns will discuss various ways to advance this goal, but the rest of this column discusses “measured brevity,” the need to convey the written message as efficiently and economically as possible.

If we can convey our message in five pages, we risk losing the audience if we consume ten. Readers with a choice may not even start a lengthy document, and readers growing weary may stop well before the end. The nation’s leading law reviews, for example, have finally gotten the point. The reviews recently announced that because nearly 90% of law professors agree that “the length of articles has become excessive,” shorter manuscripts will now receive more favorable consideration from editors deciding which ones to publish.¹ When I write a law review article or newspaper column, I assume I can usually double the readership by cutting the length in half. I cannot prove the math, but I like the formula.

Measured brevity is particularly important in today’s frenetic legal practice. Federal and state judicial dockets have increased faster than population growth for most of the past generation or so, leaving judges with limited patience for overwritten submissions.² Judges may sense when they have read enough of a brief, just as counsel researching precedents may grow bored with an overwritten judicial opinion. Counsel may have no choice but to plod through an opponent’s unwieldy brief or motion papers, or through unnecessarily verbose legislation or administrative regulations, but even here the writer risks obscuring important points amid the excess verbiage. British poet Alexander Pope said that “[w]ords are like leaves; and where they most abound, much fruit of sense beneath is rarely found.”³

Outside the legal arena too, writers cannot take the audience's patience for granted these days because technology generates an unprecedented volume of readily accessible written material, leaving readers with more choices than ever before. Publishing houses release about 1000 new books each week, an imposing number that may soon seem insignificant because about 200,000 new self-published books were available for sale on the Internet in 2005 alone, with sales of some reportedly brisk.⁴ Libraries with stocked shelves also hold a growing number of digital and electronic resources. One Sunday's edition of the *New York Times* contains more written information than the typical person received in a lifetime in the sixteenth century, but readers now also have convenient daily access to most of the world's major newspapers and magazines on-line. Websites with solid information on legal matters and other important social issues have mushroomed in recent years, while around-the-clock cable and satellite television news and educational programming offer attractive alternatives to the written word.

Even in today's information age, however, measured brevity remains a judgment call that depends on the nature of the legal writer's message. Where full exposition of a legal doctrine or argument requires more extended discussion, a longer presentation may be essential to effective communication. Unwarranted brevity may compromise the sound administration of justice or the rights of clients. Efficient, economical expression remains key to holding the reader's attention, but Justice Joseph Story offered the wise advice that sometimes "[b]revity becomes of itself a source of obscurity."⁵

ROLE MODELS FOR THE LEGAL WRITER

Legal writers pondering whether (as Shakespeare put it in *Hamlet*) "brevity is the soul of wit" can look to two familiar role models in the law.⁶ Some of the Supreme Court's most elegant, most

memorable — and briefest – opinions flowed from the pen of Justice Oliver Wendell Holmes, Jr. To her surprise, Fanny Dixwell Holmes entered her husband’s office one day and found him writing while standing at a podium. “Nothing conduces to brevity,” he explained, “like a caving in of the knees.”⁷

Holmes was a 22-year-old lieutenant colonel in the Union army on November 19, 1863, when one of the nineteenth century’s most celebrated country lawyers dedicated a national cemetery to fallen Civil War soldiers.⁸ Preceding the country lawyer to the podium was Edward Everett, widely regarded as the greatest orator of the day. After Everett spoke for more than two hours, the country lawyer surprised the 15,000 listeners with a speech consisting of fewer than 300 words and lasting less than two minutes. Years at the bar had taught the country lawyer how to sense his audience’s needs and earn the right to a reader. Mindful that the nation’s newspaper and magazine readers needed a concise, stirring and readily embraceable rationale for wartime perseverance, he knew that his audience extended beyond the shadows of the cemetery.

The country lawyer was Abraham Lincoln, and the speech was the Gettysburg Address, perhaps the most famous speech in American history, one that has remained on the lips of American schoolchildren ever since. The leather-lunged Everett, whose interminable oration bequeathed no word or phrase worth remembering today, knew he had been outdone. “I should be glad,” he wrote the President the next day, “if . . . I came as near the central idea of the occasion in two hours, as you did in two minutes.”⁹

Wisdom worth pondering whenever we lawyers seek an audience for our own writing.

* *Douglas E. Abrams, a law professor at the University of Missouri-Columbia, has written or co-*

authored five books. Four U.S. Supreme Court decisions have cited his law review articles.

ENDNOTES

1. See Joint Statement Regarding Articles Length (2005), http://www.law.northwestern.edu/lawreview/docs/articles_length_policy.pdf (Jan. 14, 2007).
2. See, e.g., Judicial Conf. of the U.S., Long Range Plan For the Federal Courts 9-12 (1995); ABA Comm'n on the 21st Century Judiciary, Justice in Jeopardy 39 (2003) (state courts).
3. Alexander Pope, An Essay on Criticism, Part II, line 109 (1711).
4. Elizabeth Day, The Publishing Revolution, Sunday Telegraph (London), May 7, 2006, at 18; Corey Kilgannon, After the Luftwaffe and a Gulag, a Memoir, N.Y. Times, Nov. 26, 2006, at 14L1; Bill Eichenberger, Knee-Jerk Reviews of Modern Fiction Miss What It Means, Columbus (Ohio) Dispatch, July 29, 2001, at 7F.
5. Joseph Story, Story's Miscellaneous Writings 153 (1835).
6. William Shakespeare, Hamlet, Act II, scene 2.
7. Catherine Drinker Bowen, Yankee From Olympus 324 (1944).
8. Id. at 188; Sheldon M. Novick, Honorable Justice: The Life of Oliver Wendell Holmes 80-89 (1989).
9. James M. McPherson, Abraham Lincoln and the Second American Revolution 112 (1991).