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Anticipatory Edits

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BY PATRICK BARRY

Anticipatory Edits

When writing on behalf of others, humility
and playing your part go a long way.



It is better for your career if you fix your own mistakes; I do not enjoy fixing them for you.
—Mark Herrmann, *The Curmudgeon's Guide to Practicing Law* (2006)

GOOD WRITING, I OFTEN TELL MY STUDENTS, IS “ANTICIPATING THE EDITS OF YOUR BOSS.” I then clarify that the definition of “boss” in that statement is intentionally expansive. A supervisor at work can count. A teacher in school can count. So can a valued customer or client.

The key is to start thinking about two things:

- 1) the actual people who are going to review your writing; and



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2) the likely changes they'll make to it.

By implementing those changes yourself—before the document ever hits your boss's desk or inbox—you can save them a lot of time and cognitive effort. I doubt they'll hold that against you.

Targeted foresight

One way to think about anticipating the edits of your boss is to view the process as a form of targeted foresight. You need to make informed predictions about a particular person's future revisions and then adjust your current draft accordingly.

Studying past revisions can help. So can talking to people who have worked with your boss. Discovering someone's pet peeves

through a little research and networking is a lot less painful than discovering someone's pet peeves because you keep violating them.

You'll also want to build the capacity to do something that is crucial in the legal world, particularly given the hierarchical nature of the profession and the frequency with which junior attorneys draft material that is ultimately reviewed, signed, and filed by a senior attorney: Adapt to somebody else's preferences. Interdependent writing doesn't work so well when what goes into the system must be completely redone by the person at the other end of the supply chain.

A federal judge, for example, once offered the following succinct explanation when I

TAKEAWAYS >>

- When writing on behalf of someone else, exercise “compositional humility.” Mute your stylistic preferences and embrace theirs instead.
- Find out your boss's pet peeves—and then edit accordingly. They won't miss having to constantly redo your drafts.
- If you have multiple bosses, develop “linguistic flexibility.” A key skill for young lawyers in particular is ventriloquism.

THINK OF THE BEST SOLO PRACTITIONERS YOU KNOW. CHANCES ARE THEY EACH HAVE AN ASSISTANT, FRIEND, OR SPOUSE WHO DOUBLES AS A DARN GOOD PROOFREADER AND SOUNDING BOARD. NOTHING WORTH READING IS WRITTEN ALONE.

asked her what went wrong with a former clerk she ultimately regretted hiring: “He never learned to write like me.”

The clerk was bright. The clerk was motivated. The clerk had been educated at one of the top law schools in the country. His fatal flaw, however, was failing to develop a skill that is unfortunately as undertaught as it is professionally valuable: ventriloquism. Your job as a law clerk is to write in the voice of your judge, just like your job as an associate is to write in the voice of whichever partner is giving you assignments. These gigs are not platforms for self-expression.

I say that as someone who took an embarrassingly long time to understand that a lot of the writing I would be doing as a lawyer would be for other people. I didn’t immediately grasp the value you can add by knowing how to draft a document (or even just an email) that matches how your boss would compose it themselves. It wasn’t until I started my own clerkship that I finally had what turned out to be an important epiphany. I realized that anticipatory edits are among the most efficient—and the most considerate—edits you can make.

A tale of two judges

The special circumstances of my clerkship greatly accelerated my sorely needed awakening: I worked for two judges at once.

Both judges were excellent writers.

ISBA RESOURCES >>

- Justice Michael B. Hyman, *Judging Your Writing* columns, III. B.J., isba.org/ibj/authors/hymanmichaelb.
- ISBA Practice HQ, *A Lawyer’s Guide to Writing Well*, law.isba.org/3qxjP4Y.
- ISBA Free On-Demand CLE, *Legal Writing: Tools and Diagnostics for Clarity* (recorded Aug. 2021), law.isba.org/36wSB4a.

But they were also very *different* writers. One of them, whom we’ll call “Judge A,” drafted opinions using WordPerfect, a software application I had never used before. The other, whom we’ll call “Judge B,” preferred Microsoft Word.

Although I fortunately already had a lot of experience with Microsoft Word, having to divide my digital loyalty between it and WordPerfect definitely affected my cumulative proficiency. The more I learned about WordPerfect, the more I forgot about Microsoft Word. It was like someone who, in trying to speak a second language, sometimes forgets how to think in their first.

Another difference between the two judges was in the way they made revisions. Judge A handwrote every comment in an exquisite red script that often rose to the level of calligraphy. Crossed-out commas have never looked so classy. Judge B’s edits were also classy, but they were usually generated electronically. “Track Changes”—not a red pen—was the delivery method of choice.

Even the things the two judges shared, such as an admirable commitment to the precise use of language, manifested themselves in separate ways. Perched on Judge A’s desk was a bobblehead doll of the legal writing expert and lexicographer Bryan Garner. Perched on Judge B’s was a sign that communicated a similar fastidiousness, but in a more biting manner. It read: “I am silently correcting your grammar.”

Along these same lines, while my

decision to include the word “persnickety” received high praise in a draft I submitted to Judge A, I knew better than to try that kind of thing with Judge B. In Judge B’s view, being clear meant being conversational. And when’s the last time you heard someone say “persnickety” out loud, let alone over a cup of coffee?

Linguistic flexibility

Having to regularly toggle between my judges’ parallel sets of expectations and preferences wasn’t easy. But it was a tremendous form of training. Forced to figure out how to write in two distinct voices—neither of which was my own—I developed a helpful amount of linguistic flexibility.

Judge A, for example, subscribed to the view that the word *which* should not be used to introduce what’s known as “restrictive” or “essential” clauses. (These are clauses that provide important identifying information about the noun that preceded it.)

Prohibited: “The four products *which* the plaintiff bought were all defective.”

Preferred: “The four products *that* the plaintiff bought were all defective.”

This prohibition even extended to sentences quoted from other sources. Judge A would use corrective brackets to switch the offending *which* to a much more palatable *that*.

Original version: “The four products *which* the plaintiff bought were all defective.”

Judge A version: “The four products

[that] the plaintiff bought were all defective.”

Anticipating this edit, I dutifully started doing the exact same thing. But only for Judge A.

Judge B didn't feel as strongly about *which* and *that*. So the Judge B version of me didn't either. I didn't modify quotations. I didn't use corrective brackets. Instead, I focused on a distinction that mattered a lot more to Judge B: *since* vs. *because*.

A lot of people use *since* and *because* interchangeably to signal causation.

Option 1: “*Since* the four products that the plaintiff bought were all defective, she returned them.”

Option 2: “*Because* the four products the plaintiff bought were all defective, she returned them.”

Not Judge B. To Judge B, the word *since* doesn't signal causation. It signals chronology. (Note: Both judges were fine with starting a sentence with “Because.”)

Prohibited: “*Since* the four products that the plaintiff bought were all defective, she returned them.”

Preferred: “*Since* buying the four products this morning, she has already returned three of them.”

Judge B actually highlighted this semantic difference all the way back during my interview for the clerkship position. It then surfaced again in a follow-up email from Judge B a few days later. Pasted into the email was a sentence I had written in one of our earlier correspondences. I had used *since* in the prohibited way.

Given that I had already been offered the job at this point, Judge B simply underlined the infraction and added the following admonition, playfully raising doubts about the wisdom of deciding to hire me: “I may have to reconsider.”

Compositional humility

Remembering whether your boss prefers *that* over *which* or *because* over *since* might not seem like the hardest of tasks. But the simple act of taking that kind of preference into consideration

can help remind you that a good deal of writing is coproduced.

To get a sense of what I mean, check out the acknowledgments section of your favorite nonfiction book. You'll see, in the number of people that the author thanks, just how many minds and forms of support go into putting together a quality piece of work.

Pieces of fiction don't typically include an acknowledgments section, but that doesn't mean the world's greatest novels, plays, and short stories were brought into the world unassisted. Tolstoy had an editor. Hemingway had an editor. Even Jane Austen—about whom her brother Henry once said, “Everything came finished from her pen”—had an editor, according to recent archival research by Kathryn Sutherland of Oxford University.

Or think of the best solo practitioners you know. Chances are they each have an assistant, friend, or spouse who doubles as a darn good proofreader and sounding board. Nothing worth reading is written alone.

Yet even though writing can often feel like a team sport, it is important to keep in mind that when you're just starting out in your career, your position on that team is unlikely to be the quarterback, pitcher, or any other high-status spot. You're a role player. Your value comes from helping other people shine. Which means you must learn to contribute (and compromise) accordingly. Self-aggrandizement is rarely a good career move.

Instead, try to cultivate a trait that nicely complements the linguistic flexibility mentioned above: compositional humility.

In my own writing, for instance, I don't follow Judge A's prohibitions against *which* or Judge B's against *since*. I've seen too many skilled writers ignore those bans to think that either is much of a ban at all.

But the writing I did for Judge A and Judge B wasn't *my* writing. It was *their* writing. My signature didn't appear at the bottom of any document we filed. My public reputation wasn't on the line. Neither of them hired me to craft sentences and paragraphs in my own

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distinctive voice. They hired me to craft sentences and paragraphs in their distinctive voices. When I did my job right, I channeled their words, their syntax, their refreshingly unique way of explaining why they've made a particular decision. I channeled, in short, the judges themselves—idiosyncratic bans and all.

Epilogue

Now that I am a law professor, I get to hire the student equivalent of clerks: research assistants. We talk about anticipatory edits a lot, especially when it comes to improving the quality of the pieces I publish. The students don't really take on the drafting responsibilities that many clerks are assigned. But it has been fun to see them embrace the idea of anticipatory edits in other ways.

My favorite example was when a research assistant who had worked with me for multiple semesters changed the wording of two of my sentences and then left the following note: “I tried to make the sentences sound more like you.”

I love that. Someone completely different from me—different age, different upbringing, different set of preferences, priorities, and overall life experiences—was able to do a better job of making sure I sounded like me than I could. That gives me a whole new level of anticipatory edits to shoot for. Anticipating the edits of myself. **EB**