PRESIDENT'S PAGE
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The Case for Brevity

We are a sound-bite society. The average news story now lasts about 40 seconds. Texts are 160 characters; "tweets" only 140. Mainstay publications like *Time* and *Newsweek* have morphed from multi-page features, to double-page reports, to today's screen-shot sized online articles. Television courtroom dramas routinely contain tightly worded sub-minute opening statements and closing arguments.

Hard to imagine a profession where efficiency is more important than ours. California's budget woes have the number of judges down while the number of filed cases stays up. The average Orange County Superior Court Judge handles about 550 cases at a time. Law and motion calendars are frequently 25 or 30 matters long. Our window to advocate in court is necessarily small.

Ensconced in a world of brevity and highly educated, we attorneys set the standard for efficient communication, right? Wrong, of course. Ask anyone who's prepared responsive pleadings, sat through a morning law and motion calendar, or, dare I say it, attended one of my speeches. We are a wordy lot; if we charged by the word, most of us could retire early.

Why haven't we lawyers "gotten the memo" to be brief? One reason, ironically, is our own lack of time. As Mark Twain reportedly wrote, "I would have written a shorter letter but I did not have the time." It's time consuming to prepare a tight, well-thought-out document; stream-of-consciousness with minimal editing is far easier and faster.

Another reason is that many of us simply aren't thinking in terms of brevity. We're conditioned to be excessive. Law schools traditionally reward thinking of as many points as possible. Early practice often focuses on "not missing anything," as do our own insecurities. We need to be reminded that what we file is called a "brief" for a reason. I confess I often don't fully scrutinize for efficiency unless reminded to review for efficiency. Indeed, my impetus for this topic was the word limits of this column (about 950 words), coupled with my ongoing (like all of us) need to get it done while under time pressure to do many other things.

Reflecting on the relationship between lack of time and the need to be concise inspired me to reach out to some judges for their thoughts on how we can do better with their limited time.

As usual, I hit the advice jackpot by contacting Orange County Superior Court Judge and former OCBA President Franz Miller. As with all things Judge Miller, he's one step ahead of me, having published his "Ten Tips for Better Trial Court Advocacy" in *Orange County Lawyer* in 2010. Many points he made supplanted what I'd written in my draft of this column.

In his article, Judge Miller points out that while we attorneys appear in court concerned about only one matter, judges typically have to be concerned about multiple cases, sometimes dozens, on that same day. "All of my cases are important to me," he wrote, "but it is a *relative* importance, an importance spread across many cases." Having to cover so many matters renders "time," or lack of it, the judge's primary adversary. Attorneys assist their cause by helping the court with this adversary.

Judge Miller's tips for time-efficiency include, when writing, write less. "Write tighter, terser. Use fewer words. Use simpler sentences. Use active voice. Read *Plain English for Lawyers.* And for goodness sakes, write chronologically." When arguing, listen more, talk less. Most judges indicate what they think is important, so "segue from what the judge wants to hear to what you want the judge to hear." Whether writing or arguing, tell the court at the outset precisely what you want.

These pointers are also important in jury trials, where our "sound-bite society" is our audience. Programming and social media dependent jurors have lived on a diet of short, pithy presentations. Orange County Superior Court Judge David Hoffer has presided over felony criminal trials for more than five years. His view is that a jury has about a twenty-minute attention span. "Make sure you get to the key points in that time," he advises. "If you bury key points later in a longer presentation, your jury may not appreciate them." Judge Hoffer suggests starting with a direct assertion of why you should prevail. For example, in a criminal closing argument, state precisely why there is reasonable doubt in Count 1, then why there is reasonable doubt in Count 2, and so on. Only after that should you give the details and show how reasonable doubt applies.

Ultimately, taking the time to efficiently focus on key points makes you more likely to succeed.

In longer cases, where you must talk more, "show the jury that you are going to respect its time," says Judge Hoffer. Describe what you will cover, why it's important, and advise them of progress. "Give the jury a sense of movement. If jurors understand what will be covered and their progress in doing so, they see a purpose and a point and will be more attentive and appreciative through the process."

Ultimately, taking the time to efficiently focus on key points makes you more likely to succeed. "In a jury trial, if you establish that you get to the point right away," observes Judge Hoffer, "jurors will perk up and be more attentive to you and your positions every time you get up." So will judges, says Judge Miller: "Brevity and efficiency from lawyers certainly help us provide important court services with shrinking resources. But more than that, it serves the lawyer's client better because it allows judges to make better rulings. I applaud Orange County lawyers' efforts to help the court in that regard."

Let's help ourselves and our clients, and see if we can get Judge Miller clapping.

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