



## Legal Writing and the Business of Law

# Legal Bills, Clear Writing, and Establishing Trust (Part 2 of 2)

By Stephen D. Feldman

This column is the second in a two-part series about an overlooked area of “legal writing”: the writing that appears in legal bills.

In the first part, I theorized that clearly written legal bills can establish deep, long-lasting trust between lawyer and client.

We now pivot to the next question: What actually makes for clear legal bills?

Here’s my instinct: The reader of a legal bill has the same expectation that any reader has about any story. The reader wants to understand what the story is about, who the story is about, and which parts of the story are most important.

Let me give an example. Imagine that a lawyer represents her client in a business dispute. During a given month, the key aspects of the case involved briefing on a discovery-related motion, preparing and defending a fact-witness deposition, and preparing a Rule 30(b)(6) deposition notice.

The bill for that month should necessarily focus on those activities, and not on ancillary activities. Creating that bill, however, requires attention to detail in the time-entry narratives.

Here are five specific ideas for preparing and revising those narratives.

**Know the reader.** If you were writing a brief, you’d select words and tone based on your impressions of the particular judge’s preferences. Why not follow the same approach when drafting time-entry narratives?

Some in-house lawyers prefer detailed narratives. Using the example above, an in-house lawyer might want each narrative to describe the sections of the discovery brief being drafted, or to describe the precise preparation activity in connection with the deposition. Other in-house lawyers might take a less-is-more approach. “Continue preparing brief in response to Rizzo Corpo-

ration’s motion to compel” might be enough. Same for “Prepare Mr. Baez for his deposition.”

There’s no right or wrong. It’s simply a question of reader preference. The key thing is *actually to ask* for the reader’s preference if it’s not apparent. Asking the question will bring lawyer and client together on expectations. That conversation is yet another trust-building opportunity.

**Focus the narrative on the “what.”** Like it or not, hourly billing gives a client the right to examine the methods that a lawyer selects and to judge how much time should be spent on each method. For this system to work, the narrative needs to describe the method fairly and accurately.

Some methods are hard to describe. Taking time to consider discovery strategy requires deep thinking, a review of documents, maybe a review of some law and some facts, and maybe talking to colleagues. A lawyer might describe all of this as “strategize about discovery,” but that doesn’t reveal the lawyer’s methods.

Alternatively, the narrative could describe the specific things that the lawyer did to strategize. That’s the “what.”

Describing the “what” gives complete transparency to a client about the methods. If a client wants to ask why you talked to your partner about discovery strategy, you can tell him or her. That might open up a much-needed conversation about the development of discovery strategy. But just writing “strategize,” without more, creates a vague impression of the methods that you used.

**Focus the narrative on the “why.”** Even if “strategize” is a sensible way to describe a lawyer’s methods, the narrative can still clarify *why* he or she is strategizing. Sometimes the “why” is obvious and need not be expressly stated, but that’s not always true.

When the purpose of the “why” isn’t apparent, there’s a solution: actually write down the purpose of the activity. In fact, the more that you focus your narrative on the purpose of your methods, the more likely that you will employ greater precision to describe the methods.

Consider the following narrative: “Strategize about sequence of fact-witness depositions to obtain optimal testimony for summary-judgment motion.” This narrative tells the reader that there’s something about



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the order of depositions that will help the lawyer get the testimony needed for a key motion. That's certainly more specific than "strategize about discovery."

Even more detail could be given: "Confer with Mr. Fowler to select ideal sequence of fact-witness depositions to obtain testimony on unreasonableness of Rizzo Corporation's reliance on Mr. Lester's misrepresentations." This narrative gives the exact method—talking to a colleague—and the precise reason for the method. And it tells the reader what's important in the case.

This level of detail might be too much for some clients, but you get my drift. If you write each narrative with the "why" in mind, then you're much more likely to write a narrative that benefits the reader—a narrative that tells the reader what the lawyer did, why the lawyer did it, and how it fits into the big picture.

**Use names when appropriate.** We've all heard the refrain that narratives should not describe conferences between lawyers and should instead describe what the lawyers have talked about, such as "strategize about [fill in the blank]."

I don't understand why a narrative can't refer to both the conference and the purpose of the conference. Again, hourly billing gives a client the right to see and to judge a lawyer's methods. One method is for lawyers who are working on a case to exchange ideas with each other and develop great ideas that serve a client's objectives. That exchange usually occurs when the lawyers are in the same room talking to each other. There's no secret about this, so what's wrong with describing it?

There's arguably power in describing it. You're sharing with a client exactly what you're doing. You're not trying to hide the ball. The client knows (or should know) everyone in that meeting.

Your narrative, moreover, will describe the purpose of the meeting—the "why." You've then prepared an entry that describes the methods, tells the reader who was involved, and explains why. That approach fulfills the reader's expectations.

**Write each narrative so that a layperson would understand it.** After law school, I served as a law clerk for Judge Pasco Bowman, a judge on the U.S. Court of Appeals for the Eighth Circuit. I could write a separate article about clerking for Judge Bowman—a judge who had as much passion for the 1985 Kansas City Royals as he did for *Strunk & White*.

Anyway, the clerkship involved an orientation in St. Louis with all Eighth Circuit law clerks. At that orientation, the late (and brilliant) Judge Richard Arnold talked about his approach to drafting opinions. In short, Judge Arnold told us that good writing is good writing, and that we should all read good writing directed at a general audience, because that is what an opinion is. He mentioned *The New York Times* specifically.

I took that advice to heart, and I continue to do so today. The advice applies as much to legal bills as to any other form of writing. This approach encourages simple words and concise phrases or sentences. That's respectful to the reader, who wants to spend as little time as possible reading legal bills.

This approach becomes especially powerful when combined with the first point—know your reader. Whether your reader (*client*) likes a lot of detail, little detail, or somewhere in between, you can provide that detail by choosing simple words and using a "Joe Friday" tone.

As with the column that I wrote previously, published in September, this column reflects my views alone. Again, I would be interested to know how these suggestions stand up to your experiences. If you're willing to share your feedback, I'd be grateful to receive it. My email address is [stephen.feldman@elliswinters.com](mailto:stephen.feldman@elliswinters.com).

In the end, as long as we're using hourly billing as the touchstone of legal services, the words in legal bills have tremendous importance—not merely for getting paid, but also for establishing deep levels of trust between lawyer and client.

