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March, 2003

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Available at: https://works.bepress.com/gerald_lebovits/36/



NEW YORK STATE BAR ASSOCIATION

MARCH/APRIL 2003 | VOL. 75 | NO. 3

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Writing on a Clean Slate: Clichés and Puns

BY GERALD LEBOVITS

Unless you practice between Scylla and Charybdis, you'll want to avoid clichés and puns like the plague. That's an open-and-shut case. But some exceptions – distinctions with a difference – prove the rule. Learning the pros and cons of clichés and puns is its own reword.

Clichés

The word "cliché" comes from the French "cliquer," to stereotype. Clichés are rhetorical or proverbial. Rhetorical clichés are popular because of their quick wisdom and catchy sounds. Proverbial clichés are metaphorical ("apple of his eye," "apple does not fall far from the tree").

As a general rule, last, but not least, knock off clichés. All things considered, nip them in the bud. Clichés fall on deaf ears. They paint the writer with a broad brush as a copier with limited independent thought. They're avoidable and banal.¹

But sometimes clichés are just the ticket – if you twist them and if they're not stale. At first blush, after all, the sum and substance of clichés is that they're not carved in rock:

- "To add insult to perjury . . ."
- "An unwritten law isn't worth the paper it isn't written on."²
- "No truer words were ever silenced."
- "Tried and untrue."
- "Bankruptcy is a fate worse than debt."

Clichés are also effective when used as word-play to make a memorable argument:

- Atticus Finch closing to the jury, arguing that whites falsely accused his African-American client of rape: "This case is as simple as black and white."³

Puns

Puns are for children, not groan readers. If you inflict cruel and un-

usual punishment, you might be sent to jail until you end your sentence with a preposition.

- "This is a case without appeal."
- "Old lawyers never die. They just lose their appeal."⁴
- "There's no justice on the New York State Court of Appeals. Only judges preside there."

Only clever and original puns, used rarely, are acceptable in legal writing.

- "Defendant, charged with petit larceny, suffers from kleptomania. When it gets bad, he takes something for it."

- "Defendant, guilty of forging U.S. currency, proved that imitation is the sincerest form of flattery."

Do you like the puns that follow? The first is funny and insults no one. The second shows that over-used and obvious puns are the lowest form of humor. The third is childish and mean.

- From *Kentucky Fried Chicken*: "And the bizarre element is the facially implausible – some might say unappetizing – contention that the man whose chicken is 'finger-lickin' good' has unclean hands . . . We find a kernel of truth in all Kentucky Fried's contentions and therefore affirm."⁵

- From Staten Island Family Court:⁶

Is a girdle a burglar's tool or is that stretching the plain meaning of section 140.35 of the Penal Law? This elastic issue of first impression arises out of a charge that the respondent shoplifted certain items from Macy's Department Store by dropping them into her girdle.

Basically, Corporation Counsel argues that respondent used her girdle as a kangaroo does her pouch, thus adapting it beyond its maiden form.

The Law Guardian snaps back charging that with this artificial ex-

pansion of section 140.35's meaning, the foundation of Corporation Counsel's argument plainly sags.

- From the First Circuit, when a grocery worker claimed sexual discrimination: "Having taken stock of plaintiff's case, we find the shelves to be bare."⁷

How do you spell R-O-L-A-I-D-S? In an opinion that considered whether the U.S. Department of Agriculture's Food and Nutrition Service properly fined the Commonwealth of Massachusetts, the First Circuit used the following puns: "Finding the penalty hard to swallow, the Commonwealth serves up a gallimaufry of issues for appellate mastication. Although these issues contain some food for thought, they lack true nutritive value."⁸

Puns are for children, not groan readers.

Some can't resist humor when they see interesting names in the style of a case. In *Plough v. Fields*,⁹ the court opened with this: "In spite of its title, this case does not involve the age old struggle of mankind to wrest a living from the soil . . ." In *Silver v. Gold*,¹⁰ the court began by noting that "[d]espite its title, the case before us does not involve the relative merits of precious metals in the commodities market . . ." In *Short v. Long*,¹¹ the court ended thus: "The judgment of the trial court is affirmed, and that is the 'long' and 'short' of it."

Legal writers shouldn't pun when it comes to case names. It's too easy, like shooting fish in a barrel, and too obvious. Often the best humor is coincidental. Consider *United States v. Van Boom*,¹² an explosive opinion about a

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fellow who threatened to detonate a bomb. *United States v. Hash*¹³ hashes out a case of a cannabis cultivator. *United States v. Funmaker*¹⁴ merrily details the exploits of a defendant who had fun making fires. And in *Worm v. American Cyanamid Co.*,¹⁵ a family of Worms sued a herbicide producer.

If you must pun, don't get carried away. In *Oregon Natural Resources Council v. March*,¹⁶ the district court's first decision, about a contract to build a dam, was reversed. On remand, the district court might've left well enough alone after its first sentence: "The dam case is back. When the case was here before, there was only a dam plan. Now there is half a dam."¹⁷

Cringe at commenting on your prose. Writing about your writing distracts the reader and, depending on the comment, shows weakness or self-congratulation: "In a manner of speaking," "if you will," "so to say," "no pun intended," "you should pardon the expression," "appellant's argument – to avoid a cliché – mixes peaches and pomegranates."

Develop your own style. No one style represents the ideal. Your style will command attention if you don't bore your reader. No longer does the profession prefer solemn, stuffy, ponderous legal writing. Be serious, but interest your reader. Then press your reader forward, with restraint focused on substance. Leave no stone unturned to elude the rock and the hard place by writing on a clean slate. Follow that advice and you'll land on your own two feet, not between Scylla and Charybdis.

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1. A good, lengthy list of impermissible clichés is found in Bryan A. Garner, *The Elements of Style* § 7.16, at 198–99 (1991).
2. The adage "A verbal contract isn't worth the paper it's written on" is illogical. "Verbal" relates to words, oral or written.

3. Harper Lee, *To Kill a Mockingbird* 205 (1960).
4. Saying on countless coffee mugs and T-shirts.
5. *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368, 372, 374 (5th Cir. 1977) (Goldberg, J.).
6. *In re Charlotte K.*, 102 Misc. 2d 848, 848, 427 N.Y.S.2d 370, 371 (Fam. Ct., Richmond Co. 1980) (Leddy, J.).
7. *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 187 (1st Cir. 1989) (Selya, J.).
8. *Commonwealth of Mass., Dept. of Pub. Welfare v. Sec'y of Agric.*, 984 F.2d 514, 518 (1st Cir.) (Selya, J.), cert. denied, 510 U.S. 822 (1993).
9. 422 F.2d 824, 824 (9th Cir. 1970) (Duniway, J.).
10. 211 Cal. App. 3d 17, 19, 259 Cal. Rptr. 185, 185 (2d Dist. 1989) (George, J.).
11. 197 Va. 104, 111, 87 S.E.2d 776, 780 (1955) (Miller, J.).
12. 961 F.2d 145, 145 (9th Cir. 1992) (Noonan, J.).
13. 956 F.2d 63, 64 (4th Cir. 1992) (Phillips, J.).
14. 10 F.3d 1327 (7th Cir. 1993) (Wood, J.).
15. 5 F.3d 744 (4th Cir. 1993) (Niemeyer, J.).
16. 677 F. Supp. 1072 (D. Or. 1987) (Burns, J.).
17. *Id.* at 1073.