Not Mere Rhetoric: Metaphors and Similes—Part II

Gerald Lebovits

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Not Mere Rhetoric: Metaphors and Similes—Part II

BY GERALD LEBOVITS

Learning about metaphors like those in last month’s Legal Writer column is like recalling a high-school literature lesson: A wolf in sheep’s clothing at first, it can turn into the apple of your eye. More dead, proverbial, clichéd metaphors appear in the law than you can shake a stick at. But rhetorical advice the masters offer aplenty. Study, for example, Justice Louis Brandeis’s guidance: “Our Government is the potent, the omnipresent teacher.”

Similes

If apt, concrete metaphors are gifts for those you want to persuade, similes are like presents that will make your readers smile. A simile is an explicit comparison, comparing dissimilar things, using like, as, as if, or as though. Similes are distracting when repetitious but powerful when image provoking.

Justice Frankfurter on lawyers’ exaggeration: “After all, advocates, including advocates for States, are like managers of pugilistic and election contestants, in that they have a propensity for claiming everything.”

Like is a preposition that governs nouns and noun phrases. Like is not a conjunction. Correct: “Like his father, Samuel Hand, and his grandfather, Augustus C. Hand, Learned Hand was a famous judge.” Incorrect: “Like I said, don’t use no double negatives.” Should be “As I said . . . .”

Combining Metaphors and Similes

Great legal writers combine metaphors with similes in a single sentence. See whether you can figure out which is the metaphor and which is the simile.

Justice Roberts: “The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only.”

Justice Jackson: “Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper’s will.”

Justice Scalia:

[The use of legislative history [is] the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends. . . . [T]he legislative history of § 205 of the Soldiers’ and Sailors’ Civil Relief Act contains a variety of diverse personages, a selected few of whom—its “friends”—the Court has introduced to us in support of its result. But there are many other faces in the crowd, most of which, I think, are set against today’s result.]

The Supreme Court per curiam: “Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline.”

Putting your finger on figures of speech is like adding shape and body to your legal writing.

Allegories

An allegory, or symbolic story, resembles an extended metaphor. Allegories are rare in legal writing, but here is one:

I liken the area of law to the allegory of the woodcutter who attempted to cut firewood in uniform lengths. Instead of measuring each successive log to the original, he measured it to the log cut immediately before. At the end of the cord, he discovered that the last log bore no resemblance in length to the first.

Want your legal writing to look like a class act? Illuminate with metaphors and similes. It will be as if your writing took on a touch of class. Required are time and practice to illustrate with clever, memorable metaphors and similes. The law, after all, is a jealous mis-

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tress. But—go figure. The rhetoric will not be verbiage.


**GERALD LEBOVITS** is a judge of the New York City Civil Court, Housing Part, currently assigned to Brooklyn and Staten Island. An adjunct professor and the Moot Court faculty advisor at New York Law School, he has written numerous articles and *Advanced Judicial Opinion Writing*, a handbook for New York State’s trial and appellate courts, from which this column is adapted. His e-mail address is Gerald.Lebovits@law.com.