



Use Your Allusion, Too

We've all read briefs that are—how shall I say it—a little too creative. They detour into irrelevant matter. They substitute strained comparisons for apt analogy. They fudge facts or posit bizarre, alternate-universe explanations that cannot coexist with common sense. They fly free, untethered by actual cases, statutes, or rules.

As a result, I hesitate to use the word *creative* in connection with legal writing. Much effective day-to-day legal writing is skillful but safe. It communicates its message clearly and without undue flourish. It accomplishes its ends efficiently.

That said, at times, a carefully selected and well-placed literary device can enliven your writing, evoke comparisons and emotions that communi-

cate your meaning more effectively, and enhance the persuasive power of your prose. Most lawyers routinely use analogy, tone, and point of view. The better lawyers also use rhythm, understatement, theme, and even foreshadowing.¹ Allusion, though, feels a little bit hokier, maybe a bit riskier. Few lawyers have the confidence and skill to use it effectively.

What Is Allusion?

Allusion refers to a short, indirect reference to something that has particular cultural or historical significance. It relies

on a bank of shared knowledge and experience. As a result, allusion can only be successful if writer and audience both draw on that same bank. A successful allusion can pack a world of meaning and emotion into few words, invoke a shared experience and common values, and access emotions that a more straightforward logical argument cannot. "Whenever a lawyer needs to appeal to actual human experience and human nature,"² a well-chosen allusion may be the best tool.

Some allusions are safe because they are so commonplace. For example, most jurisdictions have some version of a Good Samaritan law. Most people understand the reference to Good Samaritan without being versed in the Biblical parable to which it refers. Ever use the word quixotic? You employed allusion. Your reader may understand the dictionary definition of the word without having read *Don Quixote*.

The Rules of Allusion in Legal Writing

On the other hand, a lawyer using a less commonplace (and therefore less trite) allusion gambles, trusting that his reader shares his cultural and educational touchstones. So, is it worth it to even try? Bryan Garner thinks so. Allusions, says Garner, "If not too arcane, can add substantially to the subtlety and effectiveness of writing."³ A literary allusion, said Charles Allan Wright, "pays the judge the unstated compliment of assuming that he is one of those 'genuinely well-read' persons who will recognize and enjoy being reminded of what Garner calls 'the common body of literature with which all cultured persons are familiar.'"⁴

Wright offered this guideline: The text must be intelligible

even if the reference is not understood.⁵ If your reference requires a footnote, skip it. References to popular culture are often problematic; they lack the element of flattery that Garner invokes, and allusions that resonate with members of one group might have no particular meaning to another.

It's no accident that most allusion in legal writing involves Shakespeare or Dickens. Most people are at least somewhat familiar with both authors. Both wrote vividly of both law and the human condition. A party facing an opponent with the resources to engage in protracted discovery battles might do well to invoke *Jarndyce and Jarndyce*. And we all can grasp the futility of an effort that amounts to mere "sound and fury, signifying nothing."

You can't get more basic than a fairy-tale reference: One prosecutor compared the trail of stolen goods falling from a fleeing vehicle to the breadcrumbs dropped by Hansel and Gretel.

Layered allusions can be particularly effective. Lin-Manuel Miranda does this very well in his *Hamilton: An American Musical*.⁶ One need not be a fan of Notorious B.I.G. to appreciate "Ten Duel Commandments"; the notion of a short list of simple, binding rules resonates with virtually everyone. But someone who grew up listening to Biggie will also recognize the prescription for successful illegal activity—whether crack dealing or dueling—and may even reflect that Smalls and Hamilton met the same end.

In short, the successful use of allusion relies on a simple rule that applies to all good writing: Know your audience. **AF**

endnotes

1. Don't worry: In future columns, I'll provide examples of legal writers effectively using many of these devices.
2. Kevin T. Traksos, *Book Review*, 93 MICH. L. REV. 1820, 1826 (1995).
3. Charles Allan Wright, *Literary Allusion in Legal Writing: The Haynsworth-Wright Letters*, 1 SCRIBES J. LEGAL WRITING 1, 5 (1990).
4. *Id.*
5. *Id.*
6. This column is secretly part of a series that I mentally subtitle "Everything I Need to Know About Legal Writing I Can Learn from *Hamilton: An American Musical*." Don't tell anyone.

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