

Daniel R. White
THE SKY IS BLUE

Every law partner fancies himself a grammarian. He would edit Strunk and White. There is no sentence so straightforward and simple that he will not happily torture it beyond recognition.

Take the sentence “The sky is blue.”

No junior associate would be so naïve as to think this proposition could pass muster in a big firm. If he made it through law school, he knows enough to say, “The sky is *generally* blue.”

Better yet, “The sky generally *appears* blue.”

For extra syllables, “The sky generally appears *to be* blue.”

A senior associate seeing this sentence might take pity on the junior associate and explain that before showing it to a partner the junior associate should put it in a more “lawyerly” form. At the very least the sentence should be revised to say, “In some parts of the world, what is generally thought of as the sky sometimes appears to be blue.”

Armed with these qualifiers, the junior associate thinks himself protected.

His conversation with the reviewing partner will proceed thus:

Partner Carter: You say here that in some parts of the world, what is generally thought of as the sky sometimes appears to be blue. I assume this is just an early draft. Could I see the final version?

Associate Williams: Uh, that’s all I have right now ... what exactly do you mean?

Partner Carter: Well, it’s a bit bald, don’t you think? I mean, just to come right out and assert it as fact.

Associate Williams: I beg your pardon? Are we talking about the same thing?

Partner Carter: Well, this business about “the sky”—what did you mean by “the sky”?

Associate Williams: Well, I meant what I see when I look up at least, when I'm outside. Isn't that what everyone sees?

Partner Carter: Okay, if you mean *only* when you're outside, you have to say so. Our opponents in this case would love to rip us apart on that kind of error. And what about at night? Even at night? I see stars at night—are they blue? Do you mean everything *but* stars, or do you mean when there are no stars out?

Associate Williams: I meant during the day, I guess.

Partner Carter: You *guess*. Williams, this is serious business. We can't go around guessing at things. Besides, what about the sun? If it's daytime, the sun will be out—or do you know something I don't?

Associate Williams: Well, sure ... I mean, no, I don't.... But no one in his right mind looks at the sun. You'd go blind.

Partner Carter: What support do you have for this comment about "some parts of the world?" *Which* parts? Do we need to state it so broadly? Can't we just say "in Cleveland" or wherever we mean?

Associate Williams: That sounds fine to me. I just never thought anyone would challenge ... that is, who would disagree with...

Partner Carter: And what do you mean by "generally thought of?" Thought of by whom? Lawyers? Scientists? Morticians? Dam-mit, Williams, this piece has more holes in it than Swiss cheese. I haven't seen such sloppiness in all my years at Cavil, Quibble & Quiver. Take it back and see if you can't do a little better this time around.

Principles of Legal Writing

1. Never use one word where ten will do.
2. Never use a small word where a big one will suffice.
3. Never use a simple statement where it appears that one of substantially greater complexity will achieve comparable goals.
4. Never use English where Latin, *mutatis mutandis*, will do.
5. Qualify virtually everything
6. Do not be embarrassed about repeating yourself. Do not be embarrassed about repeating yourself.
7. Worry about the difference between “which” and “that.”
8. In pleadings and briefs, that which is defensible should be stated. That which is indefensible, but which you wish were true, should merely be suggested.
9. Never refer to your opponent’s “arguments;” he only makes “assertions,” and his assertions are always “bald.”
10. If a layperson can read a document from beginning to end without falling asleep, it needs work.