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*The brilliance of his finest short stories is nowhere denied, and they were not only brilliant themselves but the cause of brilliance in other men, for he established principles and ideals which have endured into our own time.*¹

Recently, I had a spine-tingling Edgar Allan Poe sensation, but it wasn't because I was reading one of his suspenseful short stories. Instead, I was reading Poe's critique of Nathaniel Hawthorne's *Twice-Told Tales*.² I felt the hairs on the back of my neck standing up because I realized that Poe, by describing the qualities that make a short story effective, was providing excellent advice for lawyers writing persuasive briefs. My professional and personal passions were intersecting, leading to an electrifying recognition that Poe's advice about writing should be shared with lawyers.

Poe named four qualities—brevity, unity, focus, and brilliant style—as critical for short stories. These exact same four qualities are familiar to lawyers because they are just as critical for persuasive briefs. So, my response to Poe's advice was not a thrill of seeing writing advice for the first time, but instead an appreciation that studying these essential

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¹ EDWARD WAGENKNECHT, EDGAR ALLAN POE: THE MAN BEHIND THE LEGEND 141 (1963) (describing Poe's success as a short-story writer and his influence on the short story as a unique literary genre).

² Poe's often-reproduced critique was first published in *Graham's Magazine* in May 1842. GREAT AMERICAN SHORT STORIES: FROM HAWTHORNE TO HEMINGWAY 523–29 (Corrine Demas ed., 2004).

qualities in the context of the short story could help me and other legal writers.

Like many lawyers, I have been a voracious reader my whole life. But the law has restricted my free reading time. It isn't that I'm not spending the majority of each day reading because, as every lawyer knows, we read a lot. But time to devour great literature decreases the minute law school starts. And frankly, a lot of what we read as lawyers does not qualify as great writing.

Just recently, I found a solution to my problem of not having enough time to read literature by returning to a genre that is regaining popularity—the short story. A year ago, I started a new reading club, the Short Story Book Club.³ We read one short story every month, and we discuss all the same things I discussed in my previous book clubs including theme, character, dialogue, imagery, metaphor, tone, and pacing. The Short Story Book Club has been wildly successful. In contrast to my former book club experiences, every member reads the full text every month.

Enter Edgar Allan Poe. Anyone who has purchased or read short story collections can't help but notice how often the people who write the Introductions to these collections mention Poe. Of course this is in part because he is recognized as a great writer, so he gets a lot of ink for his success as a short story author. But Poe is also remembered for his essential role in defining and developing America's one unique contribution to literature—the short story.

It was Poe who first recognized that the short story was a different kind of fiction from the novel. Short stories were not simply just shorter novels. Instead, they were a new literary genre with unique qualities. Poe was not the first American to write a short story. Washington Irving and Nathaniel Hawthorne had been writing short stories “of the modern type” since the 1820s.⁴ But Poe was the first to define a short-story technique and then to demonstrate how the technique could form a system. In effect, Poe discovered the short story: “Poe was the first to make an accurate chart of the new regions and to demonstrate how this chart might best be used.”⁵

Poe came to his revelation that short stories were a unique literary form in large part because of a quirk in the law. In Poe's lifetime, copyright laws were so lax that English novels were easily accessible and cheap to reproduce.⁶ American authors writing novels simply could not compete

3 We call ourselves “The Shorties.”

4 FRED LEWIS PATTEE, *THE DEVELOPMENT OF THE AMERICAN SHORT STORY: AN HISTORICAL SURVEY* 141 (1923).

5 *Id.*

6 *See id.* at 130.

for readers. In fact, Poe was so upset about international copyright problems and so enthusiastic about improving these laws that he even entered law school for a short time.⁷

Luckily for us, Poe didn't stick with law school. As a result, he left a legacy of American literature that we lawyers can learn from. And in a twist of irony that will forever bind him to the law, Poe is buried in the Westminster Hall graveyard in Baltimore adjacent to the University of Maryland Law School.⁸

Poe recognized that American authors could remain competitive by writing a new kind of fiction and publishing that fiction in a new format. He led the charge by using American periodicals (magazines) as the channel through which he could reach readers.⁹ Short stories were the perfect genre for periodicals. Poe helped to make magazines, and the short story, part of the literary culture of the United States and eventually part of the world's literature.

Poe worked for magazines for several years as an author, editor, and critic.¹⁰ Poe put his stamp on the short story by envisioning and then explaining the ideal qualities of a short story in his critique of Nathaniel Hawthorne's *Twice-Told Tales* first published in *Graham's Magazine* in 1842.¹¹ Poe's analysis of the "prose tale"—what we now call the "short story"—remains the ultimate piece about the short story as a distinct literary form.

Poe's "universally quoted review of Hawthorne's *Twice-Told Tales*" has been called the "leading document in the history of the form."¹² Some point out that no study of the American short story is complete without an examination of Poe's critique.¹³ Poe's list of the ideal qualities of a short

7 WOLF MANKOWITZ, *THE EXTRAORDINARY MR. POE* 137 (1978). Lawyer Henry Beck Hirst was Poe's walking and drinking companion. Hirst and Poe were both interested in revising international copyright laws. *Id.* Poe's father had also briefly studied law, but then "had thrown down his law books" and joined a company of actors. PATTEE, *supra* note 4, at 115.

8 Francine Schwadel, *A Night with the Master of Terror; And We Don't Mean Stephen King*, WALL ST. J., Oct. 31, 1986, at 35.

9 Poe wrote during the golden age of the magazine in America. Jeffrey Andrew Weinstock, *Magazines*, in EDGAR ALLAN POE IN CONTEXT 169 (Kevin J. Hayes ed., 2013) ("Among the most significant forces molding Poe's experience was the dramatic expansion of magazine publishing that coincided with his adult years . . .").

10 Dawn B. Sova, *Introduction*, in EDGAR ALLAN POE COMPLETE TALES AND POEMS x (2012). Poe worked as an editor at *Burton's Gentleman's Magazine*, *Graham's Magazine*, *Alexander's Weekly Messenger*, and *Godey's Magazine and Lady's Book*, among others, plus he wrote criticism and numerous poems and short stories. *Id.*

11 PATTEE, *supra* note 4, at 134. Poe had written about the differences between the short story and the novel as early as 1836. *Id.*; see also KENNETH SILVERMAN, EDGAR A. POE: MOURNFUL AND NEVER-ENDING REMEMBRANCE 166 (1991) (noting that "Poe had touched on the idea [unity of effect or impression] in several earlier reviews" and drew on August Wilhelm Schlegel's ideas of "unity of interest" and "totality of impression").

12 PATTEE, *supra* note 4, at 134.

13 See *id.*

story apply with equal force to brief writing, so perhaps every study of persuasive legal writing also should include a review of Poe's critique.¹⁴

Poe advised that a short story has four essential qualities: unity, brevity, focus, and brilliant style. In addition to providing four qualities that are also essential for briefs, Poe's advice to short story writers, like the best advice provided to brief writers, is given not as a "rigid formula" but instead as a "prototype for success."¹⁵

I. Unity and Brevity

Unity and brevity were inextricably intertwined for Poe, so these two qualities will be discussed together. Poe recognized the necessary connection between the two. Indeed, it is the combination of unity and brevity that forms the essence of a short story. Brief writers should also recognize that the combination of unity and brevity forms the essence of a successful brief.

Poe explained it this way: "[I]n almost all classes of composition, the unity of effect or impression is a point of the greatest importance. It is clear, moreover, that this unity cannot be thoroughly preserved in productions whose perusal cannot be completed at one sitting."¹⁶ Poe further clarified that a short length was needed to achieve "unity of impression," and he used poetry as an example of another brief literary form that "induces an exaltation of the soul which cannot be long sustained."¹⁷ When Poe said brevity was essential he meant it: "Extreme brevity will degenerate into epigrammatism; but the sin of extreme length is even more unpardonable."¹⁸

Poe thought the rhymed poem was "how the highest genius could be most advantageously employed for the best display of its own powers."¹⁹ But the next best form that "should best [fulfill] the demands of high

¹⁴ Asking lawyers to read about Poe is not a tough sell. Americans like Poe. I have experienced the allure of Poe when giving talks about him—the house is always full. J.W. Ocker explained Poe's popularity:

And yet [Poe] is just as much a part of pop culture as the latest dance song or Internet meme or reality television show. Everybody knows Poe . . . From the teenagers who have barely existed long enough to have sampled anything in life to the elder librarians who have read every word printed on silverfish food, an astounding number of people of an astounding variety of tastes and lifestyles love Poe. Or identify with him. Or recognize him as some kind of symbol.

J.W. OCKER, POE-LAND: THE HALLOWED HAUNTS OF EDGAR ALLAN POE 10 (2015). Ocker wrote his travelogue after visiting many of Poe's geographical haunts. *Id.* at 12–13.

¹⁵ Corrine Demas, *Introduction*, in GREAT AMERICAN SHORT STORIES, *supra* note 2, at vii.

¹⁶ GREAT AMERICAN SHORT STORIES, *supra* note 2, at 524–25.

¹⁷ *Id.* at 525.

¹⁸ *Id.*

genius” could be found in prose—specifically the short story.²⁰ Poe was very specific in defining the parameters of a short story:

We allude to the short prose narrative, requiring from a half-hour to one or two hours in its perusal. The ordinary novel is objectionable, from its length As it cannot be read at one sitting, it deprives itself, of course, of the immense force derivable from *totality*. Worldly interests intervening during the pauses of perusal, modify, annul, or counteract, in a greater or less degree, the impressions of the book. But simple cessation in reading, would, of itself, be sufficient to destroy the true unity. In the brief tale, however the author is enabled to carry out the fullness of his intention, be it what it may.²¹

The combination of unity and brevity gives the writer control over the reader. Poe concluded: “During the hour of perusal the soul of the reader is at the writer’s control. There are no external or extrinsic influences—resulting from weariness or interruption.”²²

The key to a successful short story is this concision and selection. As Professor Corinne Demas noted, “Writing is an intellectual pursuit, and the mind of the short-story writer is engaged in a kind of contest: Given the limitations of the genre—which in the case of the short story is its length—what can be accomplished?”²³

Poe’s focus on the critical importance of unity and brevity gave me goosebumps. His advice could easily transfer from a text on effective short story writing to a text on persuasive legal writing. Yet, as is so often true with Poe, he offered a slight new twist on the conventional wisdom. His emphasis on the absolute interconnectedness between unity and brevity was new. And lawyers could benefit from seeing the two qualities as conjoined instead of as two separate qualities. By joining the two qualities of unity and brevity, a lawyer is more likely to achieve the ultimate purpose of persuading the audience.

Brevity and unity, individually, are well known as important persuasive writing qualities. Lawyers know that judges constantly plead for brevity. Brevity is routinely listed by judges as the quality they consider most essential for brief writers.²⁴ Not surprisingly, lawyers also want brevity in judicial opinions. Unity is also essential. Lawyers are taught to select a unifying theory of their case as the guiding force for a persuasive

19 *Id.* at 524.

20 *Id.* at 525.

21 *Id.*

22 *Id.*

23 Demas, *supra* note 15, at viii.

24 ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 98 (2008); Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 LEGAL WRITING 257, 279 (2002).

brief. The “theory is an idea on which a decision can be based—a way of looking at the controversy.”²⁵ A persuasive theory will convince a judge to rule in your client’s favor. And of course, persuasion is the unifying effect for all briefs.

Ross Guberman used brevity and unity to show how Paula Jones’s brief could be revised to support a strong, cohesive theme in her claim against President Bill Clinton. Guberman captured Jones’s theme in a heading: “As a Section 1983 Plaintiff, Jones Need Not Prove Tangible Job Detriment.”²⁶ A successful claim required Jones to prove intentional discrimination, but she was not required to show that Clinton adversely affected her job status.²⁷ Thus, the question under section 1983 was whether sexual harassment was intentional discrimination, not like the question under Title VII which was whether sexual harassment altered the conditions of her employment.²⁸ Again focusing on the theme, Guberman revised the brief to point out, “Here, then, the ‘relevant context’ is what the President did to Jones, not, as the President suggests, Jones’s ‘entire work experience.’”²⁹ Guberman’s revised brief succinctly noted that Jones could defeat summary judgment by proffering evidence “that the President intentionally discriminated against her because of her gender.”³⁰

Unity and brevity together create a synergy—by combining the two qualities the writer produces a total effect that is greater than simply the sum of the individual qualities because the effectiveness of each quality increases due to its joint action with the other quality.³¹ This is what Poe meant when he said the two qualities were intertwined. A successful legal writer recognizes that not only are unity and brevity important individually, but each will have a positive synergistic effect on the other.

Just like a short story, the length of a persuasive brief is one of its limitations. Too many lawyers push against that limitation and see brevity as a constraint. Instead, lawyers should recognize the power of brevity. Brevity makes the unity of effect—persuasion—possible.

Judge Harry Pregerson, Ninth Circuit Court of Appeals, emphasized that brevity and unity of effect combine to persuade:

But aside from the burden placed on the reader, unnecessarily long briefs are counterproductive. They clog a good argument with excess verbiage. They tend to lose their persuasive edge as well as their credibility.

²⁵ RICHARD K. NEUMANN, JR. & KRISTEN KONRAD TISCIONE, *LEGAL REASONING AND LEGAL WRITING* 255 (7th ed. 2013).

²⁶ ROSS GUBERMAN, *POINT MADE: HOW TO WRITE LIKE THE NATION’S TOP ADVOCATES* 338 (2d ed. 2014).

²⁷ *Id.*

²⁸ *Id.* at 339 (citations omitted).

²⁹ *Id.* at 342 (citations omitted).

³⁰ *Id.*

³¹ See WEBSTER’S AMERICAN DICTIONARY 799 (2d College ed. 2000) (defining “synergy”).

Although the rules allow a fifty-page maximum length for briefs, in my view, an appeal that merits fifty pages is a rare bird.³²

Not only do lawyers risk losing their persuasive edge, but they also risk frustrating the judges who don't want to read any more than is needed.³³

Poe was practical and very concrete in his definition of brevity. Brevity means that the writing can be read "at one sitting," which would last about an hour. Most briefs are probably read in less than an hour; the legal writer will increase the chances of a reading "at one sitting" if he commits to persuading with brevity.³⁴ The unity of effect will also help make each brief self-contained. No reader need interrupt reading to review a source or clarify a point made in the brief. The successful brief writer will have anticipated and addressed all the reader's needs.

Maybe lawyers should, like Poe, also dare to believe that we have "the soul of the reader" in our hands during the fleeting time that the judge will be reading our briefs. Certainly the most successful persuasive briefs include both justifying arguments, which show how the law requires or permits a result in favor of your client, and motivating arguments, which make a judge want to rule in favor of your client.³⁵

One familiar example where lawyers made both justifying and motivating arguments to persuade is *Brown v. Board of Education*.³⁶ The plaintiff's brief included social science and psychological studies that found "black children preferred white to brown-colored dolls."³⁷ An amicus brief, filed on behalf of the American Federation of Teachers, alleged that segregated schools violated the Fourteenth Amendment, but

³² Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. REV. 431, 434 (1986).

³³ *Id.* Kenneth Chestek advises,

I contend that a persuasive appellate brief should bring people—the client (whether human or institutional)—more conspicuously into the picture. I am not suggesting that brief writers can, or should, disregard the law or abandon the logic of their case in favor of making a purely emotional appeal. But I am suggesting that when we write about our client's conflicts, in an effort to resolve them, we need to keep the clients in the story. We can do this by weaving a thread of narrative reasoning into the logical, or legal, argument.

Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING 127, 130–31 (2008).

³⁴ Poe, of course, was referencing reading for pleasure when he praised the advantages of a reader being able to read a short story in an hour. As we know, judges are not reading briefs for pleasure—although many will concede that reading a well-crafted brief provides some modicum of pleasure. Still, the totality effect that Poe recognized when "worldly interests" cannot intervene during an hour apply with equal force even if the reader is reading for work.

³⁵ NEUMANN & TISCIONE, *supra* note 25, at 270–71.

³⁶ 347 U.S. 483 (1954).

³⁷ Jesse Greenspan, *10 Things You Should Know About Brown v. Board of Education*, HISTORY (May 16, 2004), <http://www.history.com/news/10-things-you-should-know-about-brown-v-board-of-education>; see also LINDA H. EDWARDS, READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD 361 (2012). Dean John Valery White notes in his chapter on the case that the Supreme Court unanimously held that "separate but equal" was "out of line with contemporary social scientific and policy thinking." *Id.*

also argued, “Segregation in public schools inevitably results in inferior educational opportunities for Negroes.”³⁸ As part of the lawyer’s appeal to the heart, the brief quoted the personal experience of Edwin Brook:

“Consider, for example, my own community, a small town in Northern Louisiana. It has a fine brick school plant for white, with grammar and high school departments well equipped for an enrollment of about 250 pupils. It has a gymnasium, lunch room, home economics building and agricultural building. On the outskirts of town there is a Negro school consisting of wood-frame buildings which are over-crowded and inadequately equipped. There is no gymnasium and the facilities on all levels cannot compare with those of the white school. Yet even as it is, the Negro school represents a tremendous advance over previous conditions. It was not many years ago that the students were meeting in a tent in a near-by Negro churchyard.”³⁹

The United States Supreme Court unanimously held that separate, but equal, schools were unconstitutional because they were “inherently unequal.”⁴⁰

II. Focus

Poe underscores that this unity of the “unique or single *effect* to be wrought out” requires an absolute focus on “this preconceived effect.”⁴¹ A “skillful literary artist”⁴² must be deliberate in choosing the effect, but then equally deliberate in including only those “events”⁴³ that help establish the effect.

Lest a reader think this deliberation is simply an aspirational goal, Poe drives home his point that every sentence and every word must count. The following two lines are the most famous lines in Poe’s critique: “If his very initial sentence tend not to the outbringing of this effect, then he has failed in his first step. In the whole composition there should be no word written, of which the tendency, direct or indirect, is not to the one preestablished design.”⁴⁴

³⁸ Brief for The American Federation of Teachers as Amicus Curiae at 4, *Brown v. Bd. of Educ.*, <http://www.reuther.wayne.edu/ex/Brown/Brownbrief.pdf> (U.S. Oct. 1953) (No. 1).

³⁹ *Id.* at 19–20.

⁴⁰ 347 U.S. at 495. This is such an important case with such a compelling story that it begins the seminal book about storytelling in legal representation. RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING* 1–2 (2012).

⁴¹ GREAT AMERICAN SHORT STORIES, *supra* note 2, at 526.

⁴² *Id.* at 525.

⁴³ *Id.* at 526.

In his own short stories, Poe provides outstanding examples of first sentences that count:

“The thousand injuries of Fortunato I had borne as I best could; but when he ventured upon insult I vowed revenge.”⁴⁵

“True,—nervous—very, very dreadfully nervous I had been and am; but why *will* you say that I am mad?”⁴⁶

In the first example from *The Cask of Amontillado*, Poe uses the “v” sound for emphasis in “ventured,” “vowed,” and “revenge.” The sentence builds toward an ominous ending. The reader is not sure exactly what the “thousand injuries” are, but they have incited such contempt in the narrator that he not just wants, but instead vows, to get even. In the second example from *The Tell-Tale Heart*, Poe effectively uses the em dash for emphasis around the word “nervous.” Poe contrasts “nervous” with “mad.” The narrator protests that he is not mad, but Poe forces the reader to disagree and take the very position that the narrator is insane. The words in both sentences are short, concrete, and powerful.⁴⁷

The prior two examples show Poe’s genius with brevity, but even a long first sentence achieves his preconceived effect of suspense:

During the whole of a dull, dark, and soundless day in the autumn of the year, when the clouds hung oppressively low in the heavens, I had been passing alone, on horseback, through a singularly dreary tract of country; and at length found myself, as the shades of the evening drew on, within view of the melancholy House of Usher.⁴⁸

Poe carefully selected every word in the prior sentence to begin *The Fall of the House of Usher*. He gives a visual description, but also uses alliteration to work upon our ears in his choice of the words “during,” “dull,” “dark,” and “day” to create a sense of the “oppressively low” clouds.⁴⁹

Poe’s mastery and absolute focus on a preconceived effect shine in his first three sentences of another short story, *The Masque of the Red Death*:

44 *Id.* Some short-story collections include an index with the first line from each story. See e.g., BRUCE L. WEAVER, NOVEL OPENERS: FIRST SENTENCES OF 11,000 FICTIONAL WORKS, TOPICALLY ARRANGED WITH SUBJECT, KEYWORD, AUTHOR, AND TITLE INDEXING (1995).

45 Edgar Allan Poe, *The Cask of Amontillado*, in EDGAR ALLAN POE COMPLETE TALES AND POEMS, *supra* note 10, at 733.

46 Edgar Allan Poe, *The Tell-Tale Heart*, in EDGAR ALLAN POE COMPLETE TALES AND POEMS, *supra* note 10, at 498.

47 Poe is not the only writer who labors over his first sentences. See Doug McLean, *Why Stephen King Spends Months and Even Years Writing Opening Sentences*, THE ATLANTIC (July 23, 2013), available at <https://www.theatlantic.com/entertainment/archive/2013/07/why-stephen-king-spends-months-and-even-years-writing-opening-sentences/278043/>.

48 Edgar Allan Poe, *The Fall of the House of Usher*, in EDGAR ALLAN POE COMPLETE TALES AND POEMS, *supra* note 10, at 299.

49 Demas, *supra* note 15, at xi.

“The ‘Red Death’ had long devastated the country. No pestilence had ever been so fatal, or so hideous. Blood was its Avatar and its seal—the redness and the horror of blood.”⁵⁰

Again, Poe is deliberate with every word. He repeats the words “red” and “blood” to evoke both the visual sense of blood and the foreboding horror of an uncontrolled and bloody disease. Anyone who doubts Poe’s prowess in choosing the exact right word should memorize some of his first lines, repeating them aloud to hear and thus experience his mastery of every single word.⁵¹

Focus is also essential in persuasive briefs. Judges value a focused brief; they are frustrated by a “Velcro” approach when a lawyer tosses out several different theories in the hope that one will stick.⁵² Thus, lawyers must make a tightly controlled selection of arguments, discarding those arguments that are not likely to persuade the judge. As Justice Antonin Scalia and Bryan Garner emphasize, “Take pains to select your best arguments. Concentrate your fire.”⁵³

Poe sets an exacting standard by requiring that not only every sentence, but every *word* must contribute. If it doesn’t, then it must be axed. That kind of brutal excision will only happen during editing. And we must be brutal.⁵⁴

Poe sets a very high bar for first sentences. After reading Poe’s forewarning that we can fail by writing one weak first sentence, we lawyers may want to think more about our opening sentences and paragraphs.

Strength and focus are present in the first two sentences from this brief arguing that the automobile exception does not allow police to walk up a private driveway to search a vehicle parked a few feet from the house:

Forty-six years ago, a plurality of this Court thought it “abundantly clear that there is a significant constitutional difference between stopping,

50 Edgar Allan Poe, *The Masque of the Red Death*, in EDGAR ALLAN POE COMPLETE TALES AND POEMS, *supra* note 10, at 438.

51 I experienced this phenomenon when preparing for a TED-style presentation about Poe. I often remembered almost the right words, but not Poe’s precise words. In all cases, his choice was exponentially better than the words I substituted. For example, in the first line of *The Cask of Amontillado*, I remembered the second phrase as “when he insulted me, I vowed my revenge.” Poe’s “when he ventured upon insult, I vowed revenge” obviously makes much better use of the repeating and ominous sound of the letter “v.” The two conferences were the Sixth Biennial Conference on Applied Storytelling, held on July 11–13, 2017 at the American University Washington College of Law, Washington, D.C., and the Legal Writing Institute One-Day Workshop, held on December 10, 2016 at Lewis & Clark Law School in Portland, Oregon.

52 This is also called the “kitchen-sink approach.” Judge Ruth Bader Ginsberg noted, “A kitchen-sink presentation may confound and annoy the reader more than it enlightens her.” Bryan A. Garner, *Judges on Briefing: A National Survey*, 8 SCRIBES J. LEGAL WRITING 1, 10 (2001–02).

53 SCALIA & GARNER, *supra* note 24, at 22.

54 We can’t let ourselves “fall in love with a particular phrase or sentence.” LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK* 572 (5th ed. 2010).

seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose.” The *Coolidge* plurality was right.⁵⁵

And here are the first three sentences from an amicus brief in the wedding cake case where First Amendment free speech and religion rights clash with anti-discrimination laws:

Designing and preparing custom cakes is an art. The images of *amici’s* cakes in the following pages amply justify the cliché that a picture is worth a thousand words. If this brief did nothing beyond showcasing this small sample of creative work, it would surely convey that these unique projects involve artistic talent and communicate emotions and messages at least as clearly as other forms of art.⁵⁶

We should review great first sentences from persuasive legal narratives.⁵⁷ A reflective approach would also help. Maybe once a year every lawyer should look at the first sentences of every brief he wrote during the previous year. Not all our first sentences will be as memorable as Poe’s, but we should strive to confirm that all our first sentences contribute to our overall effect of persuasion.

III. Brilliant Style

Poe noted in his essay,

Mr. Hawthorne’s distinctive trait is invention, creation, imagination, originality—a trait which, in the literature of fiction, is positively worth all the rest. But the nature of originality, so far as regards its manifestation in letters, is but imperfectly understood. The inventive or original mind as frequently displays itself in novelty of *tone* as in novelty of manner. Mr. Hawthorne is original at *all* points.⁵⁸

⁵⁵ Brief for Petitioner at 1, *Collins v. Virginia*, https://www.supremecourt.gov/DocketPDF/16/16-1027/19622/20171113123532932_16-1027%20Brief%20for%20Petitioner.pdf (U.S. Nov. 13, 2017) (No. 16-1027) (citation omitted).

⁵⁶ Brief for Cake Artists as Amici Curiae in Support of Neither Party at 3, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-2017-2018/16-111-amicus-np-cake-artists.authcheckdam.pdf (U.S. Sept. 2017) (No. 16-111).

⁵⁷ See Cathren Page, *Not So Very Bad Beginnings: What Fiction Can Teach Lawyers about Beginning a Persuasive Legal Narrative Before a Court*, 86 *MISS. L.J.* 315, 343–64 (2017).

⁵⁸ GREAT AMERICAN SHORT STORIES, *supra* note 2, at 527. Poe later slightly revised his opinion about Hawthorne’s originality. In 1844, Poe wrote that Hawthorne’s “handling” of a theme is ‘always thoroughly original’ even if the theme itself is not,” suggesting that Hawthorne’s themes were not always original. Meghan A. Freeman, *Nathaniel Hawthorne and the Art of the Tale*, in *EDGAR ALLAN POE IN CONTEXT*, *supra* note 9, at 288, 293–94. Even so, Poe believed “Hawthorne to be the most skilled American craftsman of the tale.” *Id.* at 296.

Poe was pointing out that he valued originality in both the selection of subject matter and in writing style. We lawyers are limited in our selection of subject matter because the situations our clients face often dictate what subject we will write about. Still, lawyers can sometimes be original in their approach to a legal problem.⁵⁹ And for lawyers, a brilliant style is one that is precise, accurate, and clear.

Precise. Deliberate. Clear. Analytical. One might assume that these are words describing great legal writing. But these are descriptions of Poe's writing. Poe himself wrote with the originality and brilliant style that he admired in Hawthorne, but Poe's writing was distinct from Hawthorne's—and instead unnervingly like a lawyer's—in its tight use of analytical reasoning.⁶⁰ One biographer wrote that Poe's originality “proceeded from cold intellect rather than from any spontaneous improvisations of genius.”⁶¹ It isn't clear if the “cold” refers just to Poe's intellect, or to all intellect, but lawyers certainly don't think of intellect in a negative, cold, or calculating way.

Perhaps Poe is a kindred spirit for lawyers. He wrote with all the qualities highly valued in the legal profession. Even though he lived in romantic times, “fundamentally he was not romantic: he was scientific.”⁶² Poe was analytical and “an observer of microscopically minute differences.”⁶³ He was also deliberate and a careful planner. One adoring biographer wrote that Poe's mind “developed a strange and lucid power of analytical reasoning, like a sixth sense suddenly superadded to a brain already abnormally developed.”⁶⁴ Lawyers don't consider analytical reasoning to be a “strange and lucid power,” but simply one of the essential tools needed to solve problems and thus persuade others about the rightness of our proposed solutions.

Poe was “the rock star of American literature in the 1830s and 1840s.”⁶⁵ Unfortunately, a negative obituary written by Poe's former friend and the executor of his estate, Rufus Griswold, damaged Poe's reputation for several decades after his death.⁶⁶ Notably, Poe was excluded from the

⁵⁹ See NEUMANN & TISCIONE, *supra* note 25, at 254 (explaining that one part of writing a persuasive brief is brainstorming by identifying goals and then “generating a list of possible methods for achieving each goal”).

⁶⁰ See PATTEE, *supra* note 4, at 139. Hawthorne was introspective; Poe was circumspective and “worked ever in a world of his own creation in materials drawn from his reading and imagining rather than from his observation.” *Id.*

⁶¹ *Id.*

⁶² *Id.* at 130.

⁶³ *Id.* at 140.

⁶⁴ JAMES A. HARRISON, LIFE OF EDGAR ALLAN POE 173 (1970).

⁶⁵ Sova, *supra* note 10, at ix.

⁶⁶ *Id.*

Hall of Fame of Great Americans when it was set up at New York University in 1900. He was excluded yet again in 1905 before finally being admitted in 1910.⁶⁷ Poe biographer Edward Wagenknecht commented on Poe's shocking rejection and wryly noted,

At one point his exclusion was justified on the ground that “he wrote like a drunkard and a man who is not accustomed to pay his debts.” Just what kind of a literary style is peculiar to men not accustomed to pay their debts I have no idea, but I cannot think of anyone who wrote less like a drunkard than the precise and carefully chiseled Poe.⁶⁸

Every lawyer would consider it the highest compliment to hear her writing described as “precise and carefully chiseled.” For lawyers, “carefully chiseled” writing is accurate and clear writing.⁶⁹ Of course, legal writers have an ethical obligation to be truthful; that honesty also requires precision and accuracy.⁷⁰ When the written words accurately reflect the ideas or arguments of the author then the writer has achieved the needed precision and clarity.⁷¹ Essentially, clarity means that there can be no misunderstanding by the reader. A persuasive writer must work hard to clarify the law for the reader. In fact, the more complicated the law is, the more important it is for the writer to be clear.⁷² Lawyers should emulate the way that Poe wrote with a brilliant style which was first and most importantly precise, clear, and accurate.

Many lawyers remember their own spine-tingling sensations as they read Poe's creepy, but memorable, short stories. Anyone rereading Poe's short stories will find that they wear well. Poe was a master of the genre. But lawyers also would benefit from recognizing that the qualities Poe emphasized as the hallmarks of great short stories—brevity, unity, focus, and brilliant style—are the same qualities that are the hallmarks of great briefs. Poe's insights have influenced all short story writers who followed him,⁷³ and those same insights have much to teach lawyers writing persuasive briefs.

67 WAGENKNECHT, *supra* note 1, at 11.

68 *Id.*

69 Precision and accuracy are essential in legal writing. MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* 186 (3d ed. 2013) (explaining that readers trust writers who are precise).

70 MODEL RULES OF PROF'L CONDUCT R. 4.1 (2015).

71 Robbins, *supra* note 24, at 283.

72 SMITH, *supra* note 69, at 182.

73 Demas, *supra* note 15, at vii (“When Edgar Allan Poe first described his conception of an ideal ‘prose tale’ he could hardly have imagined that his vision would be guiding the genre of the short story for the next century and a half.”).