

MEMORANDUM

TO: All Attorneys with Cases on my Docket

FROM: Pat E. Morgenstern-Clarren, United States Bankruptcy Judge, N.D. Ohio

DATE: 9 March 2016

SUBJECT: Tips: “Think once, think twice . . .”

Many years ago I studied at the London School of Economics which is part of the University of London system. The university suggested that each LL.M. candidate meet with the head of her program, and so I appeared at my appointed time and spoke for a few minutes with an individual who shall remain nameless for reasons which will soon become apparent. At the end of my allotted time, he briskly assured me he had confidence that I could resolve any difficult situations that might come my way during my year-long studies, but if not—here he paused for effect—I should “think once, think twice” and only then contact him for assistance.

Needless to say, I never called him. The “think once, think twice” incantation, though, stuck with me and even became part of our family lore. I want to suggest that while the advice was not useful to me as a law student, it can actually be quite useful in the practice of law. In a world where clients are looking at legal fees with a fine tooth comb, and where lawyers feel pressure to complete work in the least amount of time possible, the fine art of editing sometimes gets lost. This can lead to briefs that stray from the persuasive into the vituperative because in doing a first (and often the only) draft authors lose sight of the goal: to persuade the trier of fact, not to punch back at an adversary.

These are some of the words and phrases I have seen in briefs that distract me from the legal argument:

absurd	ludicrous
blatant	pandering
bizarre	ridiculous
desperate	self-serving
incongruous	sophomoric
irresponsible (if directed at counsel’s argument)	throwing [some argument] at the wall to see what sticks

If as you are writing a brief you use one of these words: think once, think twice. And then? Back space and push “delete.”