Style Matters: Tips and Techniques for Making Your Writing More Effective

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Clear, concise, effective writing has never been more important for lawyers than it is today. Three members of Vermont Law School's writing faculty will help you enhance the power of your writing by sharing their insights on style, organization, and editing, respectively.

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Introduction

Recently, I found a quotation by Judge Murray Cohen of the Texas Court of Appeals that underscores the importance of seminars such as this one. Judge Cohen asked, “Is good writing rewarded?” Answering his own question, he observed, “I used to think it doesn’t matter much, in comparison with legal authority, justice, and the like.” Now I know better: Good writing is rewarded so automatically that you don’t even think about it.”

Because good writing influences judicial decisions, you are wise to attend a seminar devoted to enhancing the effectiveness of lawyers’ writing. Whether we like it or not, lawyers are professional writers; therefore, we should view ourselves as such and should seek out writing instruction throughout our careers. After all, a lawyer will probably write more words during a legal career than a novelist will during the same time period. And, as legal writing authority Marie Buckley, notes, “You cannot be an effective lawyer today if you cannot write.”

Effective legal writing requires awareness that the audience is king. Writing should serve the reader’s needs, not the writer’s ego. Nathaniel Hawthorne acknowledged that when he said, “Easy reading is damned hard writing.” In the same vein, Marie Buckley has written that “[r]eading legal writing is work.” “All legal writing,” she adds, “is technical writing and our readers are all unwilling captives to our writing.” The remainder of this presentation will discuss techniques for making the reader’s experience as easy as possible despite the complex nature of the subjects about which we lawyers must write.
Palsgraf and Effective Writing Techniques

A famous example of effective writing by a lawyer, hence easy reading, is then-Judge Cardozo’s description of the facts in Palsgraf v. Long Island Railroad Co., which appears below.7

Plaintiff was standing on a platform of defendant’s railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform many feet away. The scales struck the plaintiff, causing injuries for which she sues.8

What distinguishes the fact statement in Cardozo’s Palsgraf opinion from the pedestrian recitations of case facts that we read (and write) everyday? Several techniques of effective writing come readily to mind. One of these is balance, which is evident here in the variation of the sentence lengths within Cardozo’s paragraphs.9 The sentences in the Palsgraf excerpt are generally compact, but they nonetheless vary in length, ranging from six words to twenty-seven words. Too many short sentences in a row produce a staccato rhythm that can be jarring, even annoying, to read, while too many long
sentences in a row can cause readers to lose their concentration, thereby hindering comprehension. But a mixture of short and longer sentences aids persuasion; the short sentences are more dramatic, while the longer sentences evoke a calmer, more descriptive and explanatory tone. This “interplay of long and short sentences, writes Richard Weisberg, adds “stylistic spice to substantive analysis.\textsuperscript{12}

A second effective writing technique in the \textit{Palsgraf} opinion is its economical word usage, as evidenced by the final clause in the fourth sentence, which reads: “though the train was already moving.” Many of us would probably have written: “despite the fact that the train was already moving.” The economical word usage is also reflected in the final sentence, which uses the ever-economical active voice, observing that “the scales struck the plaintiff,” not the wordier and passive “the plaintiff was struck by the scales.”

Judge Cardozo’s \textit{Palsgraf} opinion also honors Professor Weisberg’s admonition to “feature the subject, don’t bury it.”\textsuperscript{13} Notice that in every sentence in the excerpt the subject is either the first word (e.g., plaintiff, a train, two men, a guard, a package, etc.) or almost the first word (e.g. It was a package). Featuring the subject by placing it at the beginning of the sentence encourages the use of strong verbs and the active voice, both of which aid in comprehension and persuasion. “Once the lawyer seizes and uses the true subject of her thought,” writes Professor Weisberg, “strong words will follow.”\textsuperscript{14} Weisberg even offers a short mantra designed to help us remember the writing techniques evident in the \textit{Palsgraf} excerpt:

\begin{verbatim}
I love the law.
The law needs good writers.
\end{verbatim}
Good writers seek brevity.

Brevity thrives where strong verbs abound.

I love strong verbs.\textsuperscript{15}

Finally, Judge Cardozo relied on short, simple words when drafting his \textit{Palsgraf} opinion, further aiding comprehension and persuasion. Apparently, he internalized Herman Melville’s observation:

\begin{quote}
A man of true science uses but few hard words, and only when none other will answer his purpose; whereas the smatterer in science thinks that by mouthing hard words he proves that he understands hard things.\textsuperscript{16}
\end{quote}

\textbf{Planning Your Writing: Madman, Architect, Carpenter, Judge}

The many fine features of Judge Cardozo’s fact statement in \textit{Palsgraf} reflect careful planning by the author. Planning one’s writing projects tends to promote emphasis on the subject of a sentence, the use of strong verbs and the active voice, and brevity. Conversely, a lack of planning is an invitation to writer’s block or, ironically, verbosity. The best planning mechanism I have encountered for legal writing asks the writer to adopt, in succession, “four distinct roles that facilitate creativity, organization, and precision in the final product.”\textsuperscript{17} The respective roles are Madman, Architect, Carpenter, and Judge.\textsuperscript{18}

While playing the Madman role, the writer brainstorms ideas about the potential subjects to be covered in the document and jots down notes identifying those subjects, not necessarily in a logical order.\textsuperscript{19} Legal writing guru Bryan Garner advises that if, in a busy law practice, you have an hour to spend on a writing project, spend ten minutes or so as the Madman to generate the ideas your document should address.\textsuperscript{20} The Madman role, which is also referred to as “freewriting” or, more colloquially, a “brain dump,”
requires you to “tolerate the raw quality of your first thoughts to let them out of the privacy of your head and allow them to exist nakedly in black and white.” Such tolerance will pay dividends because the practice of jotting down undeveloped ideas enables you to reflect on them and refine them as your writing process progresses. Besides, the mere act of jotting down words “stimulates creativity in a way that does not occur when those words remain in your mind.”

When the Madman’s frenetic scribbling is finished, the writer should assume the Architect role and devote five minutes or so of the one-hour project to turning the Madman’s assorted ideas into a logically structured outline. The Architect’s outline is a powerful antidote to writer’s block because it provides a series of prompts that help you to start the discussion and to move it forward from one subject to the next. Besides, without an outline, it is more difficult to know where to place good ideas that may emerge as you write and easier to lose your train of thought when diverted by those good ideas. Put simply, playing the Architect role gives you a blueprint for the structure you plan to build.

Completion of the Architect’s outline signals the Carpenter to step forward and use it, along with notes derived from careful research, to construct a draft document that discusses each subject identified in the outline in an order that facilitates the reader’s decision-making process. Because the Carpenter is the principal drafter of the document, you should give the Carpenter at least twenty-five minutes in a one-hour writing project. While playing the Carpenter role, avoid excessive rewriting as you go, which is sure to make the writing experience slower and more stressful. The stress results from the considerable mental energy required to edit and generate ideas.
simultaneously. So do not begin a writing project with the idea that each sentence must be perfect in its first incarnation; perfection in a first draft is neither likely nor necessary.

Finally, when the Carpenter’s draft is complete, assume the role of the nitpicky Judge and examine the draft’s organization, transitions, grammar, and punctuation. Consider “everything from the document’s “tone” (excessively strident or meek?) to whether it is unnecessarily repetitive or beset by comma splices, misplaced modifiers, or a lack of subject-verb agreement.”

Give the Judge approximately ten minutes to edit the document. During those ten minutes, remove examples of what Professor Weisberg calls “the lawyer’s great nemesis,” namely, verbosity. By carefully considering the goal of each sentence and by focusing on its subject, “the Judge” can trim the fat from bloated sentences, as shown below:

1. The notice of default judgment came at a time when our legal staff was extremely busy.
2. There can be no doubt that the statute applies in this case.
3. You will hear from us in about two weeks’ time.
4. The plaintiff filed suit despite the fact that she knew that the case was weak.

The Importance of Balance, Flow, and Tone in Legal Writing

Recall the Palsgraf excerpt. Having been carefully planned, it exhibits three characteristics of elegant writing: balance, flow, and tone. As noted earlier, the excerpt showed balance because its sentence lengths varied so as to maximize the reader’s interest and attentiveness. But balance also includes the repetition of words or sounds
within a sentence. It can achieve a dramatic effect, as seen below in an example from Thomas Wolfe’s 1929 classic novel, *Look Homeward, Angel*.

> What things will come again? O Spring, the cruelest and fairest of the seasons, will come again. And the strange and buried men will come again, in flower and leaf the strange and buried men will come again, and death and the dust will never come again, for death and the dust will die. And Ben will come again, he will not die again, in flower and leaf, in wind and music far, he will come back again.35

Justice William Brennan used the same repetitive-word technique (albeit less flamboyantly than Thomas Wolfe), here indicated by an underscore, in his majority opinion in *Texas v. Johnson*, which invalidated a Texas statute that outlawed burning the American flag as a statement of political protest.36 Accompanying the repetition was alliteration (the occurrence of the same letter or sound in words that appear next to or close to each other, here italicized). The opinion stated, in part:

> The way to preserve the flag’s special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong…. We can imagine no more appropriate response to burning a flag than waving one’s own, no better way to counter a flag burner’s message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned than by—as one witness here did—according its remains a respectful burial. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents.37

The repetition of words and phrases facilitates comprehension and retention by the reader because repetitive sounds cue mental recall, whether in one who listens to music or one who reads a text. Both comprehension and retention are necessary precursors to persuasion.38
Besides balance, the *Palsgraf* excerpt was attentive to flow, namely, the use of certain words to facilitate a mental linkage by the reader between sentences and paragraphs. In that excerpt, repeated use of the words “package” and “fireworks” links one sentence to another. The most important component of flow in legal writing is “the movement of the argument from point to point logically.” You can aid flow by avoiding, or at least limiting your reliance on, overused transitional phrases such as “nonetheless,” “in addition,” and “in conclusion,” and instead, using a key word from the prior paragraph to link that paragraph to the next one.

The following two paragraphs from an appellate brief written by Ruth Bader Ginsburg during her years as a practicing attorney illustrate flow in a legal document. The case was *Kahn v. Shevin*, which concerned the constitutionality of a $500 tax exemption that Florida provided to widows but not widowers. The brief stated in part:

> Historically, women have been treated as subordinate and inferior to men. Although discrimination against women persists and equal opportunity has by no means been achieved, women have simultaneously been placed on a pedestal and given special benefits. Both discrimination against, and special benefits for, women stem from stereotypical notions about their proper role in society.

> Special benefits for women such as the tax exemption here at issue result in discriminatory treatment of similarly situated men, themselves victims of male sex-role stereotypes. Absent firm constitutional foundation for equal treatment of men and women by the law, individuals seeking to be judged by their own merits will continue to encounter law-sanctioned obstacles.
Notice how the two paragraphs are linked by a reference, in the latter, to “special benefits for women,” a concept introduced in the former, thereby avoiding the use of tired, old transitional devices such as “in addition” or “moreover.”

Besides balance and flow, legal writing must be conscious of “tone” (a.k.a. (“voice”), which is the connection between the writer and the reader. Tone can be detached or personal; it reflects the author’s attitude toward the subject at hand and is conveyed by the words and literary techniques the author employs. Legal prose should generally exhibit a tone of “measured rationality,” avoiding both stridency and excessive colloquialism. The former is likely to seem assaultive and may make the reader angry, whereas the latter may cause the reader to question the writer’s credibility.

Measured rationality avoids using adjectives, such as “nice” or “great,” that reveal the writer’s personal feelings to the reader, while choosing descriptors carefully to paint a mental picture that sets the appropriate tone. In the latter regard, “mammoth” is a more evocative descriptor than “big.” The Palsgraf excerpt acknowledges the importance of tone by avoiding both stridency and excessive colloquialism, while using a highly evocative descriptor in stating that “[t]he shock of the explosion threw down some scales at the other end of the platform….” That shock reverberates in the reader’s mind because the reader knows that only a powerful explosion can “throw down” heavy railroad scales.

The best means of ensuring that your writing conveys the tone you intend is to read it aloud after the draft is complete. This is a must because, as one commentator explains, your “outer ear will be a check on [your] mind’s ear.” In other words, what sounds clear, cogent, and convincing to you when you read it silently may well sound
awkward or ambiguous when read aloud. But in discussing reading one’s work aloud, I
tread perilously close to Beth’s segment on editing, so I will close now and leave the rest
of the presentation to my colleagues.

**Conclusion**

Good writing is important because judges reward it. Happily, writing can be
improved, even late in one’s career, by accepting the lawyer’s role as a professional
writer and by adopting the techniques discussed here. Try using the Madman-Architect-
Carpenter-Judge method of planning your writing, and pay attention to balance, flow, and
tone as you write and edit. Both you and your readers will enjoy the results.

1 BRYAN A. GARNER, GARNER ON LANGUAGE AND WRITING 62 (2009).
5 Buckley, supra note 3, at 5 [Emphasis in original].
6 Id.
7 248 N.Y. 339, 162 N.E. 99 (1928).
8 248 N.Y. at 340-341, 162 N.E. at 99.
10 Id. at 85.
11 Id.
13 Id. at 55.
14 Id. at 58.
15 Id. at 61.
16 Fine, supra note 4, at 127.
18 This device is the brainchild of Dr. Betty Flowers, Professor of English at the University of Texas-Austin. See Betty S. Flowers, *Madman, Architect, Carpenter, Judge: Roles and the Writing Process*, 44 PROCEEDINGS OF THE CONFERENCE OF COLLEGE TEACHERS OF ENGLISH 7-10 (1979). It is discussed in Garner, supra note 1, at 4.
19 Garner, supra note 1, at 4.
20 Id. at 5.
21 Rasch and Rash, supra note 2, at 202.
22 Id.
23 Id. at 203.
24 Garner, supra note 1, at 4-5.
25 Rasch and Rash, supra note 2, at 204.
26 Garner, supra note 1, at 4-5.
Id.

Rasch and Rasch, supra note 2, at 211.

Id.

Id.

Id.

Porto, supra note 17, at 16.

Id.

Weisberg, supra note 12, at 117.

Rappaport, supra note 9, at 84.

THOMAS WOLFE, LOOK HOMeward, ANGEL 525 (1929).


Id. at 419-420 (emphasis added).

Rappaport, supra note 9, at 88.

Id., p. 96.

Id. at 94-95.


See Rappaport, supra note 9, at 98.

Id. at 99.

Id. at 100.

Id.

Id. at 105.

Id. at 105.

Id. at 110.