**So You Want to go to Law School**

**Writing Goodly**

**Part 9**

July 8, 2020

You want to go to law school. I’ll bet you also want to graduate. After passing the Bar, you probably want to be a lawyer that people respect, want to hire, and don’t mind paying lots of money to for solving their problems or keeping them out of trouble. Besides some basic intelligence, knowledge of the law, a little luck, and staying healthy, there is another thing you need have in your bag of tricks: the ability to write.

I’m going to continue my break from getting you into law school and give some more unrequested advice about law school. What I’m going to say won’t work for everyone. Some of you don’t need it. Some do. Some really, really need the following.

I realize many of you stopped reading because you already know how to write – you are saying to yourself that you can write better than this yahoo, meaning me. Hopefully you can write better than I. But I’m writing to you in my normal, small-town, midwestern talking voice. This is not how I write when I write legal. In fact, I can write in this voice, legal, army, air force[[1]](#footnote-1), political science, poet, historian, staff, and a smattering of other styles. Words be my life.

How you write on your tests and papers in law school WILL affect your grades. And if you didn’t figure it out before, your ability to write also affected your grades as an undergrad. Many of you that are reading this are juniors or seniors in college. Some of you will start law school in the Fall. You should know how to write by now: how to put a coherent sentence together; how to make an argument in writing that not only makes sense but also is convincing; and how to punctuate and spell. I’ve read a lot of papers and essay tests in my many years at UH and many more in other places I’ve taught. I am sorry to say that many students can’t: can’t write, can’t punctuate, and can’t make an argument that makes sense and is convincing. Sometime I wonder how that person got into college.

I wish I could teach you how to write, how to wow them with your words. Well, I can’t. Sorry. The more I worked on this edition of my jottings, the longer it got. It started to look like something written by someone being paid by the word. The writing started to take on a life of its own. So I had to cut a lot of it out. I know. It’s still really long. Sorry. If you feel you are really weak in your writing skills, try taking a couple of English composition courses. That may help. I’ve cut this way down and will just give you a few hints, suggestions, and recommendations. Many of the following things I learned about writing I learned the hard way – having a boss or supervisor pointing how big of an dummy I was because of something I wrote. [sigh]

Here’s more bad news – they rarely teach writing and argument construction in law school. Or if they do, a lot of students don’t learn it or forget it as soon as they graduate. They’ll teach some basic legal research and some rudimentary writing, but not everything you need to know. You’re in law school. They assume you’re smart. They assume somebody taught you the basics in the 16 plus years of schooling you’ve had so far. “But people will stop judging me by my writing once I’m a lawyer,” you think. No, no they don’t.

Would you like a few samples from some federal court opinions blasting lawyers for their writing skills? Oh, I knew you would.

“The brief was desultory in nature; in general a poorly written product with numerous typographical errors. It was obviously never edited by a caring professional. As a panel of judges already overburdened with cases and paper, we find it insulting to have to dutifully comb through a brief which even its author found little reason to give such attention. We condemn this type of shoddy professionalism.”

*or*

“Before proceeding further, the Court notes that this case involves two extremely likable lawyers, who have together delivered some of the most amateurish pleadings ever to cross the hallowed causeway into Galveston, an effort which leads the Court to surmise but one plausible explanation. Both attorneys have obviously entered into a secret pact—complete with hats, handshakes and cryptic words—to draft their pleadings entirely in crayon on the back sides of gravy-stained paper place mats, in the hope that the Court would be so charmed by their childlike efforts that their utter dearth of legal authorities in their briefing would go unnoticed. Whatever actually occurred, the Court is now faced with the daunting task of deciphering their submissions. With Big Chief tablet readied, thick black pencil in hand, and a devil-may-care laugh in the face of death, life on the razor’s edge sense of exhilaration, the Court begins.”

*or*

“A skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim. Especially not when the brief presents a passel of other arguments, as [the appellant’s] did. Judges are not like pigs, hunting for truffles buried in briefs.” . . . When reading [the] brief, one wonders if [the appellant], in its own version of the ‘spaghetti approach’, has heaved the entire contents of a pot against the wall in hopes that something would stick. We decline, however, to sort through the noodles in search of [the appellant’s] claim.”[[2]](#footnote-2)

And these are just some of what made it into the written opinion. After law school, I worked for a court of appeals for about a year and a half. You should hear what appellate judges say about some very experienced lawyers; you wonder if the judges kiss their mothers with those mouths. Or maybe you shouldn’t hear what they say sometimes. But it wasn’t all bad. When a judge would come across a well written brief, solid in both writing and argument, they would smile. They pass the brief around. They show it to their clerks and tell them, “This is what a brief should look like. Well written. Solid arguments. This is a good lawyer.”

And no. I didn’t write the briefs above that the judges were lambasting. The Courts were not talking about me. Remember, I worked for a court of appeals and know better than to send them garbage.

When writing for someone else – a teacher, a court – use the style they prefer. A study was conducted asking the ‘average American judge’ various questions to see what their preferences were. If you are in doubt about how to please a judge with your writing, or at least not make her angry, ask her clerks if the judge has a preference. Here are some of the findings of the study:

A. Looks Matter

***1. Use the Oxford comma.*** I know that the style now is to omit it, but sometimes the missing comma can lead to confusion. For example:

Ex. 1: Amanda found herself in the Winnebago with her ex-boyfriend, an herbalist and a pet detective.

Is Amanda in the Winnebago with just her boyfriend who is an herbalist and a pet detective? Or three people?

Ex. 2: Amanda found herself in the Winnebago with her ex-boyfriend, an herbalist, and a pet detective.

Here it is clear that Amanda is in the Winnebago with three people. The Oxford comma [the one before the ‘and’] clears it all up.

Don’t say, “so what?” In the law that little extra comma can be very important. In a class action lawsuit, delivery drivers for Oakhurst Dairy sued the Dairy over its failure to grant them overtime pay. According to Maine law, workers are entitled to 1.5 times their normal pay for any

hours worked over 40 per week. However, there are exemptions to this rule. Specifically, companies don’t need to pay overtime for the following activities:

*“The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:*

1. *Agricultural produce;*
2. *Meat and fish product; and*
3. *Perishable foods”*

[Note the end of the opening line, where there is no Oxford comma after “shipment” and before the “or.”]

Oakhurst Dairy argued its drivers did not qualify for overtime because they engage in distribution, and the spirit of the law intended to list “packing for shipment” and “distribution” as two separate exempt activities. However, the drivers argued the letter of the law said no such thing. Without that telltale Oxford comma, the law could be read to exclude only packing — whether it was packing for shipment or packing for distribution. Distribution by itself, in this case, would *not* be exempt.

**Without that comma, as the Court held this distinction was not clear-cut, saying:**

*“Specifically, if that exemption used a serial comma to mark off the last of the activities that it lists, then the exemption would clearly encompass an activity that the drivers perform. And, in that event, the drivers would plainly fall within the exemption and thus outside the overtime law’s protection. But, as it happens, there is no serial[[3]](#footnote-3) comma to be found in the exemption’s list of activities, thus leading to this dispute over whether the drivers fall within the exemption from the overtime law or not.”*

As a result, the Court found in favor of the drivers, costing the dairy about $10 million.

***2. Put citations to cases, law reviews, or books in the text, not in footnotes, unless the court suggests or requires otherwise.***

a. Yes, I use footnotes in this kind of writing. I like footnotes because that is the way I was taught about 100 years ago. Also, footnotes allow me to insert snarky comments that would break up the flow of paragraph.

b. Do what I say in the bolded suggestion ‘2’ and not what I do as reflected in ‘2.a.’.

***3. Include two spaces after periods.***

a. Again, I know that the new way of spacing between sentences is one space. Check with the Court requirements to see if they require one space or two.

b. Remember, many judges [and professors] are older. When there is just one space, it is sometimes difficult to see where a sentence ends and another one begins. You want your writings to be easy to read.

***4. Do what you want with your right margin***

a. One typography expert recommends a ragged right margin alleging it is easier to read.

b. I realize I’m not on the court, but I prefer ‘justified’ margins. Looks neater. Look at the first page. The margins are justified.

c. Okay, don’t really do what you want. You can use the ragged or justified right margin. You must not use align right margin or center content in the body of your brief or paper. And yes students have turned in papers with it aligned right or center. Weird.

***5. Use italics, not bold, for emphasis, but use emphasis sparingly.***

a. Italicize all court case name and foreign phrases.

b. If the emphasis is yours, be sure to say so. If the italics or bolding are in the original opinion you are quoting, say so.

c. Judges generally do not like ALL CAPS. As with texting, all caps is considered by many to be equal to shouting.

d. Note that here I used both italics AND bold with an occasional all caps. But again, I’m not writing for a court.

***6. Write numbers out only if ten or less.***

a. The GPO[[4]](#footnote-4) recommends you always write out numbers one through ten and use the Arabic numbers for 11 and above. The AP[[5]](#footnote-5) manual agrees but stops spelling out at nine and uses the numbers for 10 and above. The first time you write out a number it is sometimes wise to also include the Arabic number in parentheses behind it, e.g., one (1). Whatever manual you use to decide on writing out numbers, be consistent in your writing.

b. Don’t start a sentence with an Arabic number, e.g., “20 times I called. . . “ Either spell out ‘twenty’ or reword the sentence, “I called 20 times. . . “

***7. Generally, use words rather than acronyms.***

a. I always did the following [except when writing either of my two military languages]: the first time I used an acronym I would spell it out and put the acronym in parentheses behind it, e.g., North Atlantic Treaty Organization (NATO). After that, I would just write NATO.

b. Sample comments from some judges on acronyms: “. . . use a word rather than an acronym.” “I dislike acronyms unless they’re very well known, like IRS.”

c. Leave all you texting acronyms and abbreviations to your texting. One, it’s tacky. Two, it’s unprofessional. Three, many judges are older and just don’t understand what you mean. LOL.

***8. Use contractions cautiously, if at all, but know that the ground may be shifting.***

a. In a formal written document don’t use contractions. This is a very informal document, just me talking and writing it down, and is full of contractions. During your life as a lawyer, you may see the acceptance of contractions, but for now do not type don’t.

***9. Spell check, obviously.***

a. It’s very sad how many papers I’ve graded where the student hadn’t done spell check. With computers today, there is no excuse for a misspelled word.

b. And just because a word doesn’t show up as misspelled, doesn’t mean it’s okay. You might have typed the wrong word. Bottom line, proofread.

***10. Grammar***

a. Remember: spell check won’t catch grammatical errors and many programs won’t recognize the difference between you’re, your, and yore, or their, there, and they’re, or to, too, and two, etc. Also watch out for many of those tricky word and know when to use “effect” or “affect” or “lay” or “lie” and the many other words in the English language that make the language unique [and very frustrating].

b. Also, be careful of tense. Pick a tense and stay there. If you start in past tense, stay there. The same with first person narratives. There aren’t many things more distracting that reading a sentence that jumps all over the place in time.

***11. Pronouns are your enemy.***

a. Well, maybe not your enemy because they can be very helpful to make reading something or speaking less complicated and make the flow smoother. However, they can also be deadly.

b. When people are reading what you wrote, you don’t want them confused about who you or what are talking about; e.g., “Both Fred and Bill saw a gun on the ground. He picked it up and shot Martha.” Yeah, that’s clear.

c. And please learn when to use *its* and *it’s,* and *whose* and *who’s*. The ones with the apostrophes are contractions and do not show possession. “It’s” and mean *it is* and “who’s” means *who is*.[[6]](#footnote-6) *Its* and *whose* are possessive pronouns.

d. Okay, this one is mine. It is hard to follow conversations and written words because of the overuse of pronouns. You don’t have to use nouns or proper nouns all the time, but where a pronoun may, can, will, cause confusion, go noun.

***12. Proofread***

a. I’m not a great proofreader. You’ve probably found a bunch of mistakes in this writing. Courts don’t like typos, misspellings, etc. Oh, they understand that one or two will occasionally pop up. Few people are PPIEW,[[7]](#footnote-7) but you need to keep your errors to a minimum.[[8]](#footnote-8) Have more than one person proofread all important documents.

***13. Don’t write like a 1950s lawyer***

a. Too many young lawyers [and way too many old ones] think they have to write like lawyers in merry ole England. They use words and phrases that often drive judges crazy. It should be noted that for the sake of argument that the foregoing may not be all true owing to the fact that I do not know, inter alia, if England is as such ‘Merry’. Wasn’t that sentence irritating? It used a bunch of the words and phrases that judges like to hate. So, moving on . . .

B. Less Is More: Words Judges Like to Hate

Here are some words, phrases, and practices that judges most often say they dislike. Most of these words are written by people trying to sound like lawyers and are considered padding and add nothing to the written word or the point you’re trying to get across.

|  |  |  |
| --- | --- | --- |
| **Accordingly** | **concerning the matter of** | **in view of the fact that** |
| **Aforesaid** | **each and every** | **inter alia** |
| **appellant/appellee**  **(**vs. parties’ names**)** | **for the sake of argument** | **it should be noted** |
| **Arguendo** | **Foregoing** | **Latin in general, excepting the regularly used** |
| **as follows** (“just use a colon: the ‘as follows’ is implied”) | **hereby** | **Notwithstanding** |
| **as such** | **Hereinafter** | **owing to the fact that** |
| **Clearly** | **Heretofore** | **prior to** |
| **Comes now…** | **impact (as a verb)** | **pursuant to** |
| **respectfully submits** | **that being the case** | **Utilize** |
| **said (as an adjective)** | **the Court must …** | **wherefore** |
| **s/he / (s)he** | **the fact that** |  |
| **subsequent to** | **the instant case** |  |

**Final Caveat**: The above probably won’t get you a good grade in English, but the title of this isn’t “So You Want to get an A in English.” Learning to write as a lawyer is somewhat like learning a new language. Practice, Practice, Practice.

And don’t be afraid to ask about the professor’s or judge’s preference. For the judge writing requirements may be in the rules of practice for that Court. Better yet, establish a working relationship with the Court’s clerks and ask them for the judge’s pet peeves. Clerks can be a wealth of information about a judge’s idiosyncrasies.

1. Yes, language in the army and air force is different. I’m still not sure what language the Navy talks although I worked for the Navy for a year. [↑](#footnote-ref-1)
2. Citations of all the quoted sections available on request. Also, the lawyers names are at the front of the printed opinion so everyone in the jurisdictions knew who the judges were talking about. [↑](#footnote-ref-2)
3. Serial comma is another name for the Oxford comma. [↑](#footnote-ref-3)
4. GPO: Government Printing Office [↑](#footnote-ref-4)
5. AP: Associated Press [↑](#footnote-ref-5)
6. They may also mean *it has* or *who has*. [↑](#footnote-ref-6)
7. Practically Perfect in Every Way: like Mary Poppins. See, acronyms can be annoying just like suggestion 7 told you. Less than 5% of people know this acronym. [↑](#footnote-ref-7)
8. See p. 2 for some examples of the Courts displeasure. [↑](#footnote-ref-8)