

Chapter 14
Style

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Style

I. Introduction

What is writing style for the appellate lawyer? St. Louis attorney Jordan B. Cherrick describes it as “[t]he ability to persuade by writing and thinking well.”¹ Cherrick’s description is a good one because it defines style according to its purpose: to persuade. Brief-writing that fails to persuade is useless.

People often consider style to be separate from substance, as if substance were the meat and style the garnish. But style and substance are too interdependent to dichotomize like that. You can’t separate what you say from how you say it, any more than you can have a glass of water without the glass.

Most people would probably agree that good style depends on good substance. Good writers know that the inverse is also true: good substance can result from good style. As Ronald Goldfarb and James Raymond put it, “Good writing aids the thinking process, and therefore affects the substance of what is written.”² To write well, you must first force yourself to think well.

Style is as individual as fingerprints, because writing is—literally—self-expression. You can’t write well without revealing your thoughts and, ultimately, some piece of yourself. E.B. White described writing as “the Self escaping into the open.”³ Yet there are common characteristics that distinguish good, persuasive style from poor, less-persuasive style.

II. Some Characteristics of Good Style

A. Be Concise

“Wordiness is to a writer what obesity is to a runner.”⁴ Professor Strunk described concise, vigorous writing:

A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all sentences short, or avoid all detail and treat subjects only in outline, but that every word tell.⁵

The recipe for conciseness sounds simple: keep the necessary words and throw away the unnecessary ones. But like any other worthwhile activity, becoming good at it takes practice. To make any writing concise usually takes several rounds of editing (more on that below). Here are a few tips.

1. Skip introductory verbiage

Goldfarb and Raymond advise legal writers, “Forget the windup; just make the pitch.”⁶ “Windup” phrases often begin with *it* and end with *that*. Examples:

- It is respectfully submitted that . . .
- It should be remembered that . . .
- It is important to note that . . .

Watch out for introductory phrases like these. When you find one, you’ve probably found something you can do without. If you can, then delete it.

2. Avoid doublets and triplets

Law is full of two- and three-word phrases doing the work of one word. Examples are: *null and void*; *last will and testament*; *free and clear*; *cease and desist*; and *order, adjudge, and decree*.

In legal writing, habitually using synonymous phrases like these causes problems, because those who interpret legal writing assume that no word is surplusage, and that every word is in there for a specific reason. The truth, unfortunately, is just the opposite: much legal writing is full of surplus words.

When you find a two- or three-synonym phrase in your writing, ask yourself whether one word subsumes the others. If you find such a word, use it and delete the others. If the words have equivalent meanings, choose the one that is plainer, simpler, or more understandable. If none of the words is quite right, then find another word that is right.

3. Prefer the active voice

A sentence written in the active voice is generally more concise and vigorous than the equivalent sentence in the passive voice. For example:

Before: Objection was made by the defendant to the document, but the objection was overruled by the trial court. (18 words)

After: The defendant objected to the document, but the trial court overruled the objection. (13 words).

4. Watch out for wordy phrases

In his book *Brain Droppings*, George Carlin decries the “tendency these days to complicate speech by adding unnecessary words.” Lawyers are particularly prone to this tendency. Eliminate phrases like those in the left column, and instead use words like those in the right column.

| | |
|-------------------------|------------|
| prior to | before |
| subsequent to | after |
| for purposes of | to |
| on a daily basis | daily |
| a large number of | many |
| a small number of | few |
| an excessive number of | too many |
| an inadequate number of | not enough |
| at that point in time | then |
| in the event that | if |

5. Uncover buried verbs

Buried verbs are verbs that have been converted into nouns, usually by adding a suffix like *-ion*, *-ment*, *-ance*, or *-ity*. Thus, *collide* becomes *collision*, *decide* becomes *decision*, *assume* becomes *assumption*, *conclude* becomes *conclusion*, *pay* becomes *payment*, *assist* becomes *assistance*, and *conform* becomes *conformity*. Richard Wydick calls such words *nominalizations*.

Wordiness creeps in when we inartfully try to convert these nominalizations back into verbs, not by stripping the suffix, but by adding more words. Thus:

| Original verb | Nominalization | Wordy substitute for original verb |
|---------------|----------------|------------------------------------|
| collide | collision | was involved in a collision |
| decide | decision | made a decision |
| assume | assumption | made the assumption |
| object | objection | interposed an objection |
| pay | payment | made payment |
| assist | assistance | rendered assistance |
| conform | conformity | acted in conformity |

Once you spot a buried verb in a wordy phrase, the solution is easy: rewrite the sentence to substitute the buried verb for the wordy phrase. The result will be a more concise and more vigorous sentence.

6. Beware prepositional phrases

Prepositional phrases are not grammatically wrong, but they often signal patches of wordiness.

Grammatically, prepositional phrases modify nouns or verbs; thus they are wordy substitutes for adjectives and adverbs. When you spot a prepositional phrase, analyze the sentence to decide what word the phrase modifies. Then, if the prepositional phrase adds meaning, try to think of an adjective or adverb that will do the same job in fewer words. (If the prepositional phrase does not add any meaning, just delete it.)

A *by* phrase often signals passive voice. Try rewriting in the active voice to eliminate the prepositional phrase, tighten the construction, and invigorate the sentence. For example:

Instead of: The judgment of the trial court was reversed by the intermediate appellate court.

Try this: The intermediate appellate court reversed the trial court's judgment.

Of may be the most overused preposition in American English. Bryan Garner advises writers to try to eliminate as many *of* phrases as possible.⁷ Sometimes, you can rewrite the *of* phrase as a possessive adjective: thus “judgment of the trial court” becomes “the trial court’s judgment.” Sometimes, you can delete *of* altogether with no loss of meaning. Two examples:

- Sometimes courts find that posting [*of*] a full supersedeas bond is unnecessary.
- Many [*of the*] headlines contained eight or more words that imparted information; thus copying [*of*] the headlines might constitute copyright infringement.⁸

If you write or edit your briefs on a computer, use the word processor’s “search” or “find” feature to locate every *of*. When you find an *of*, scrutinize it. Keep it if you must; though chances are you will find something else that works better.

7. Use numerals or spelled-out numbers, but never both

A telltale sign of the inept writer is the compulsion to give both Arabic numerals and spelled-out numbers for all numbers. To really muck up the page, these writers often give us the spelled-out numbers in all caps. Thus, instead of a tidy “\$1,500,” we get “the full and true sum of \$1,500.00 (ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS).”

If you are writing a check by hand, spelling out the amount makes it harder for someone to alter the check. If you are not writing a check by hand, there is no reason for this numerical verbiage. Spell out the number or write it in numerals, but never, never do both.

The rules for choosing between numerals and spelled-out numbers are simple:

- 1) Generally, use numerals rather than spelled-out numbers, because numerals are easier to read. This is the general rule; the other rules are exceptions.
- 2) If there are no pennies involved, don't affix .00 to the end of the number. Again, the reason is readability: \$1,500,250 is easier to read than \$1,500,250.00.
- 3) If the number is less than 11, spell it out.
- 4) If the number appears at the beginning of the sentence, spell it out.
- 5) When dealing with round numbers, substitute words for long strings of zeros if it improves readability. Thus, instead of \$1,000,000,000, write \$1 billion. Don't force the reader to count a string of zeros.

B. Use Plain, Simple Words

Writers, including legal writers, go through phases of growth: first learning exotic new words and later learning to avoid them in favor of simpler words.⁹ The high-school writer strives to impress the reader with a vocabulary of arcane words. The experienced writer would rather communicate with the reader than impress the reader.

Don't be high-schoolish in your writing. Heed the experts' advice: Never use a \$20 word when there is a 10¢ word that would do just as well.¹⁰ Don't use Latin or French if there is an English term that will work just as well. Your goal is not to impress, but to be understood.

Avoid elegant variation: the compulsion to avoid repeating a word in the same sentence or paragraph. Elegant variation results in different terms being used to refer to the same thing. This can create serious problems in legal writing, because the reader will assume that a shift in terms signals a shift in meaning.

Try to write sentences to avoid referring to the same thing twice. If you must refer to the same thing twice, use the same term, to make it clear to the reader that you are referring to the same thing.

C. Understate, Don't Overstate

Never overstate your case. The reader who detects an overstatement immediately doubts everything that the writer has said. The result: the writer instantly loses credibility.

So, never overstate. Never say that something is "indisputable" when the other side is disputing it. Never open a sentence with "Clearly" if what follows requires explanation.

When describing your opponent's argument, don't demean it with hyperbole. Discard dogmatism like "devoid of merit" or "without any factual or legal support." Before dismantling your opponent's argument, state it in a way that your opponent might. What you are really doing is persuading the judge to accept your version of your opponent's argument. When you've done that, you have predisposed the judge to accept your *dismantling* of your opponent's argument. In other words, you're not doing this to be a good sport; you're doing this to win the case, by persuading the judge to adopt your argument.

D. Rid Yourself of Superstitions

Many potentially good writers are restricted by superstitions that stifle their natural voices. They strain to avoid using contractions, splitting infinitives, starting sentences with a conjunction, and ending sentences with a preposition. The result is language that is stuffy and artificial. Do away with these unnecessary restrictions on self-expression.

1. It's okay to use contractions in briefs

In the first edition of *The Elements of Legal Style*, published in 1991, Bryan Garner counseled readers to avoid using contractions in legal writing.¹¹ Now, he says contractions are okay.¹² He recognizes that judicious use of contractions results in a relaxed, confident style. Relaxed, confident attorneys aren't afraid of using contractions when arguing orally before an appellate court. If contractions are appropriate in oral argument (and they are), then they're okay in briefs too.

2. Don't be afraid to split infinitives, but be careful

Every Star Trek fan can recite the most famous split infinitive in American culture: the *Enterprise's* mission “to boldly go where no one has gone before.” The phrase has a nice rhythm that would be lost if the infinitive weren't split; “to go boldly where no one has gone before” just doesn't work as well.

Many people, including many judges, don't like split infinitives. So don't use them if you don't have to. But if you have to—if the unsplit infinitive just doesn't sound right when spoken aloud—go ahead and split. Trust your ear.

3. Yes, you may begin a sentence with “and” or “but”

Anyone who told you that it's wrong to start a sentence with “and” or “but” hasn't read the United States Constitution. That document is loaded with sentences starting with one of those words.¹³ If it's good enough for the Constitution, it's more than good enough for your brief.

4. And you may end a sentence with a preposition

Strunk and White, widely accepted authorities on good writing, say it's okay to end a sentence with a preposition. “Not only is the preposition acceptable at the end, sometimes it is more effective in that spot than anywhere else.”¹⁴ Garner approves too.¹⁵ But be careful. You want to end your sentences strongly, and often a preposition isn't the way to do that. On this one, too, trust your ear. Don't resort to a convoluted construction to artificially avoid ending a sentence with a preposition. If the preposition sounds better at the end of the sentence than anywhere else, put it there.

E. Be Humble

Strunk and White advise, “Write in a way that draws the reader's attention to the sense and substance of the writing, rather than to the mood and temper of the author.”¹⁶

Don't inject your opinion into any legal writing. In brief-writing, your opinion is irrelevant. This doesn't mean that you should drain the blood from your writing. If something is outrageous, don't tell the readers that you are outraged and they should be too. Just tell the story plainly, in all its outrageous detail, and let the readers become outraged on their own.

Never call attention to yourself or to your writing. If you use slang, just use it; don't showcase it in quotation marks. If you must use a pun or a cliché, don't apologize for it (“*pardon the pun*”), just use it. If the pun or cliché embarrasses you, try to do without it. If you can't do without it, then use it without embarrassment or apology.

F. Avoid Purple Prose

Purple prose happens when writers get so caught up in their writing that they “subordinate the message to their way of expressing it.”¹⁷ Goldfarb and Raymond describe purple prose as “art taken to the extreme, fancy footwork that ends up tripping the dancer.”¹⁸ The problem with purple prose is that it impresses the reader in the wrong way: it’s laughable.

Here are two examples of purple prose. One was written by a judge and comes from a reported decision. The other was written by Ed Wood, who is widely considered to be Hollywood’s all-time worst writer. Without looking at the endnotes, see if you can tell which is which:

Example A: We are giving you all the evidence, based only on the secret testimony of the miserable souls who survived this terrifying ordeal.¹⁹

Example B: No expert testimony is needed to corroborate the losses suffered when one witnesses his entire stock in life being swept away forever, while left standing only in his night clothes, helpless against the onslaught of the fire’s rude awakening.²⁰

You don’t want people snickering at your writing or comparing it to an Ed Wood screenplay. So the next time you catch yourself congratulating yourself on what a fine piece of writing you’ve produced—stop and look for a trusted editor to make sure you haven’t overdone it.

G. Use Quotations and Citations Deftly

Since law is based on precedent, many lawyers seem afraid to have an original thought. So, they drown the reader in quotations and citations, to cover up their lack of legal reasoning.

Don’t do that. As a lawyer you must think on your own, and as a writer you must write on your own. Authorities are *support for* an argument; they are not the argument. Nor are they substitutes for thinking and writing.

Lawyers sometimes think that if they pile lots of quotations into their writing, they will create an aura of scholarship. Overusing quotations has the opposite effect: the writer appears unable to think, and so must borrow others’ thinking. Goldfarb and Raymond put it well: “More than incidental use of someone else’s work diminishes the freshness and uniqueness of your own.”²¹

Overquoting often results from laziness. The lawyer does not want to be bothered with analyzing, selecting, and synthesizing the authorities that support the argument. So the lawyer simply dumps the entire mess into the brief, and leaves it to the reader to do the hard work of analyzing, selecting, and synthesizing. That is inconsiderate and a poor strategy for the lawyer who wants to persuade the reader-judge.

Don’t drown your reader with excessive citations. The more settled a legal point is, the fewer citations you should need. Here is a rule of thumb: If you have numerous authorities that you could cite for a given point, pick the three strongest. Use those three; discard the rest. Don’t be afraid to use fewer than three if the one or two will do the job.

If you have numerous authoritative decisions over a long time supporting one point, try this: Cite the oldest and the most recent. This gives the impression that the principle is both rock-solid and current. Do that, and you won’t need all the decisions in between.

There may be exceptions to the no-more-than-three rule. For example, if the law on a given point is unsettled in your jurisdiction, you may need to survey how other jurisdictions have resolved the issue. Even if you have to cite, say, 20 cases, don’t put them in a big ugly string cite. Instead, arrange them in a more readable form: a table organized by state or circuit, or a bulleted list. No matter how many cases you think you need, never, never string-cite.

Make your citations as unobtrusive as possible. Garner recommends putting all citations in footnotes.²² Others suggest putting citations at the end of sentences or, if possible, at the end of paragraphs.²³ Wherever you put them, put them out of the way, so they don't interrupt the reader's train of thought.

Always, always give a pinpoint cite. Steer the judge to the exact page where the supporting text can be found. The judge will be grateful if you do this—or will resent you if you don't.

By all means, do the exhaustive research. But when the research is done, don't just cut and paste it together. Think your argument through logically. Select the authorities that most strongly support your argument. Analyze them and synthesize them, and put your analysis and synthesis into the writing. Don't make the reader do your work for you.

H. Revise, Revise, Revise

All writing experts agree on this point: To produce good writing, you must revise. No one produces the best product on the first try.²⁴

To be a good critic of your own writing, you have to let some time pass between the end of the writing and the beginning of the editing. A few days is ideal. But if that isn't possible, any time gap between writing and editing will help. There are two reasons for this advice. First, to be objective, you need to gain some distance from your writing. Second, the critical skills of an editor are different from the creative skills of a writer. You need time to shelve the creative and engage the critical.

Garner recommends a systematic approach to editing. This means you should make several editorial passes over the writing, with each pass dedicated to one task.²⁵ For instance, on the first pass, you might look for excess verbiage that can be eliminated. On the second, you might look at the overall organization of the writing, to consider rearranging, consolidating, or jettisoning arguments. On the third, you might concentrate on fixing spelling and grammatical errors. On the fourth, you might focus on the form and accuracy of citations and quotations. On the fifth, you might focus on headings, making sure that they accurately describe the material and serve as reliable guides for the reader.

Garner suggests doing “macro edits” first (working on the overall structure), and “micro edits” later (focusing on individual words). You may find it more helpful to do the microediting first—clearing away the clutter first so that you can better see the overall structure. Either approach is sound; use the one that works best for you.

This multistage editing sounds time-consuming. But it's actually more efficient than trying to do everything at once, because on each pass, you are focus on one task. With better focus, you work more efficiently.

III. Conclusion

Good writing is hard work. But the potential rewards make the effort worthwhile: you can win over the judge; which will help you win the case.

IV. Suggestions for Further Reading

If you don't already have the books cited in the endnotes, get them. All are in print except for the first edition of Garner's *The Elements of Legal Style* (get the second edition) and Goldfarb and Raymond's *Clear Understandings*. You may be able to buy a used copy of the latter on Amazon.com (that's how I got my copy).

Since good legal writing is nothing more than good writing applied to legal topics, don't confine yourself to books about legal writing. Strunk and White's *The Elements of Style* is an excellent start, but don't stop there. I recommend the following:

- C. Edward Good, *A Grammar Book for You and I... Oops, Me!* (2002).
- Constance Hale, *Sin and Syntax* (1999).
- Patricia T. O'Conner, *Words Fail Me* (1999).
- John R. Trimble, *Writing with Style* (2d ed. 2000).
- William Zinsser, *On Writing Well* (25th anniversary ed. 2001).

Endnotes

- ¹ Jordan B. Cherrick, *Issues, Facts, and Appellate Strategy*, 16 Litig. 15, 15 (1990).
- ² Ronald L. Goldfarb & James C. Raymond, *Clear Understanding: A Guide to Legal Writing* x (1982).
- ³ William Strunk, Jr., & E.B. White, *The Elements of Style* 67 (4th ed. 2000). (The quotation comes from a chapter written by White alone.)
- ⁴ Goldfarb & Raymond, *supra* note 2, 90.
- ⁵ Strunk & White, *supra* note 3, at 23.
- ⁶ Goldfarb & Raymond, *supra* note 2, at 138.
- ⁷ Bryan A. Garner, *The Winning Brief* 165–66 (1999).
- ⁸ Adapted from Bryan A. Garner, *Legal Writing in Plain English* 19 (2001).
- ⁹ Bryan A. Garner, *The Redbook: A Manual on Legal Style* §11.2, at 157 (2002).
- ¹⁰ *E.g.* Strunk & White, *supra* note 3, at 76–77; Goldfarb & Raymond, *supra* note 2, at 136.
- ¹¹ Bryan A. Garner, *The Elements of Legal Style* 81 (1991).
- ¹² Bryan A. Garner, *The Elements of Legal Style* §4.6, at 81 (2d ed. 2002).
- ¹³ For example: Art. I §7 (“But in all such Cases the Votes of Both Houses shall be determined. . . .”); Art. II §1 (“And they shall make a List of all the Persons voted for, and of the Number of Votes for each. . . . But in chusing the President, the Votes shall be taken by States. . . . But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.”); Art. IV §1 (“And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”); Amendment XII (“And if the House of Representatives shall not choose a President. . . .”)
- ¹⁴ Strunk & White, *supra* note 3, at 77–78.
- ¹⁵ *See* Garner, *supra* note 12, §2.27.
- ¹⁶ Strunk & White, *supra* note 3, at 70.
- ¹⁷ Garner, *supra* note 12, §7.14.
- ¹⁸ Goldfarb & Raymond, *supra* note 2, at 140.
- ¹⁹ Edward D. Wood, Jr., *Plan 9 from Outer Space*.
- ²⁰ *Broome v. Gauthier*, 443 So. 2d 1127, 1137 (La. Ct. App. 1983).
- ²¹ Goldfarb & Raymond, *supra* note 2, at 155.
- ²² Garner, *supra* note 7, at 114.
- ²³ Goldfarb & Raymond, *supra* note 2, at 152–55.
- ²⁴ *See, e.g.*, Strunk & White, *supra* note 3, at 72; Goldfarb & Raymond, *supra* note 2, at 157–58; Garner, *supra* note 12, §7.20.
- ²⁵ *See* Garner, *supra* note 9, §13.5. Garner’s suggested steps are different from those stated above, but the general systematic approach is his.

