

10-15-1991

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Recommended Citation

Patrick R. Hugg, *Professional Legal Writing Declaring Your Independence*, 11 J. Nat'l Ass'n Admin. L. Judges. (1991)
available at <https://digitalcommons.pepperdine.edu/naalj/vol11/iss2/5>

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PROFESSIONAL LEGAL WRITING DECLARING YOUR INDEPENDENCE

by Patrick R. Hugg¹

Introduction

This article proposes two controversial assertions about the writing of many lawyers and judges today and offers a central theme for improving that writing.² These bold propositions are offered in an effort to awaken and perhaps inspire the legions of overworked, harried legal scribes inhabiting our legal community to adopt a new methodology of writing. Too many legal writers today are forced by the various (nefarious) circumstances of their work to crank out reams of hastily conceived and poorly edited text. The time has arrived for us to admit to this unacceptable state of affairs and to declare independence from unprofessional work environments and habits.

Controversial Assertion #1: Most legal writers today are mediocre writers.³ They do not write with professional skill even though they write for a living.⁴ Numerous reasons contribute to this inadequacy, but the primary causes are the inadequate training of most legal writers today and the typical modern law office pressures that force them to rush through their written work.⁵ The predictable result of these negative forces manifests itself as Controversial Assertion #2: Too much legal writing today is industrial

¹Patrick R. Hugg is an Associate Professor and Associate Dean at Loyola University School of Law in New Orleans, Louisiana. He is also a frequent lecturer on legal writing. The text of this article is taken from his address at the convention and seminars of the National Association of Administrative Law Judges, held October 19, 1990, in Kansas City, Missouri. The author thanks Thomas E. Ganucheau for his research and advice in the preparation of that address and this article.

²The author must acknowledge and thank the following authors whose classic texts have offered so much valuable instruction, insight, and inspiration in the field of legal writing. Their writings serve as models for all to learn from and have been relied on heavily by the author in his teaching and in this article: Henry Weihofen's Legal Writing Style, Robert B. Smith's The Literate Lawyer, Tom Goldstein and Jethro K. Lieberman's Lawyer's Guide to Writing Well, Lynn B. Squires and Marjorie Dick Rombauer's Legal Writing, Richard Wydick's Plain English for Lawyers, Richard Neumann's Legal Reasoning and Legal Writing, Joseph M. Williams' Style, Mary Bernard Ray and Jill J. Ramsfield's Legal Writing: Getting it Right and Getting it Written, William Strunk, Jr. and E. B. White's The Elements of Style, and William Zinsser's On Writing Well. For additional contributions to this field see bibliography following this article.

³In his new article Why Judges Have Nothing to Tell Lawyers About Writing, 1 *Scribes Journal of Legal Writing* 1 (1990), Harvard lecturer Steven Stark reminds us that "[l]awyers have always written badly and no doubt always will." He observes that much legal writing tends to be lengthy and unfocused, not to mention exceedingly boring. In short, most legal writers do not follow the fundamental principles of good writing. Duke law professor David Lange opines that we now live in a "post-literate age." Consider, as well, writer John Gardner's well-known "Gardner's law" that insists that 87% of all people in all professions are incompetent.

⁴"Judges ... should be considered professional writers, for they will often be judged by what appears on the written page." Jordan, Imagery, Humor and the Judicial Opinion, 41 U. Miami L. Rev. 693, 695 (1987).

⁵Too many law offices, including especially the offices of administrative agencies, have fallen into a sweatshop routine and mentality, where quantity prevails over quality work.

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grade/assembly line work that fails to address most of its intended purposes. In my consulting and teaching, I have reviewed carefully hundreds of written decisions by Administrative Law Judges and I report to you that a great mass of it is functional, but minimally so.⁶

The central theme presented by this article is simple and direct: If legal writers would adopt and insist on professional writing standards and techniques, their writing would be transformed into more creative and rewarding, higher quality work. This article will explore a recommended professional writing process and some of the more pertinent details of modern writing technique.⁷

Some legal writers do write well, whether intuitively or because of proper training, but most writers today do not understand fully the professional writing process or the basic techniques of writing. The threshold problem for most legal writers today is the lack of instruction. Most of them have not received any significant training in writing since high school or their freshman year in college. Many legal writers have never been exposed to writing as a process. This article will address that need and offer a professional writer's perspective, including a view of process, a brief reminder of the basic techniques, and a refresher about advanced techniques.

Most inexperienced writers underestimate the power of the written analytical essay or judicial opinion. The written expression is not just an informal, incidental recording of completed legal work; rather it is a critical, integral part of the decision-making process.⁸ Who among us has not endured that unsettling experience of being unable to articulate explicitly and in writing all of the steps of a previously held legal conclusion? So often we reconsider our reasoning when, in the full light of an explicit written outline, we realize that our mental quickness was too quick. Our profession requires that we show our reasoning on paper for the obvious reason, but also because the

⁶Illustrative examples follow in both text and footnote, but generally the materials I have reviewed over the past three years demonstrate a minimal level of sophistication or care. Typos are typical; the passive voice is dominant. Explicit explanations of law, fact, and reasoning processes are not the norm.

⁷There is no set formula for legal writing, but the professional legal writer's work can be improved through employing certain time-honored legal writing techniques and rules. See generally, Hugg, *Judicial Style: An Exemplar*, 33 Loy. L. Rev. 865, 868 (1987); Gerhart, *Improving Our Legal Writing: Maxims for the Masters*, in *Advocacy and the King's English* 765 (1960) (a pleasant, entertaining review of writing anecdotes and advice).

⁸Remember too that "[t]he opinion, as an expression of judgment, is an essay in persuasion. The value of the opinion is measured by its ability to induce the audience to accept the judgment." Leflar, *Quality in Judicial Opinions*, 3 Pace L. Rev. 579, 584 (1983).

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process of exposing it in palpable detail promotes clear and logical analysis.⁹

The legal writer must strive to be clear, orderly, and logical. The only way to assure this is to put time and effort into our writing. Haste and carelessness can cause unexpectedly poor writing. Look at this example taken from a recent ALJ decision:

The issue in this case is whether the claimant filing benefits improperly is eligible to said benefits for the week in question. The evidence shows that the claimant did not file properly and did so by his own admission.

Or how about this real-life example from a staff attorney's memo:

In its sole assignment of error, the State complains the trial court in granting defendant's motion to quash because the State has adequately identified the duty imposed by law violated by defendants.

This is more typical than you might think. Thus today's renewed interest in teaching competent legal writing is appropriate.

This discussion will be broken into four sections designed as four aspirations to help you improve your writing style and technique. The first is geared toward the way you view your own writing, the second to mastering the writing process, and the third to improving your writing with advanced writing techniques. The final aspiration urges a return to the literary aspect of professional legal writing.

I. Embrace A Paradigm Shift¹⁰

The first step to improving your writing is to change the way you view your work, your role, and your self. You have the power to transform industrial grade/assembly line writing into satisfying, creative, clear professional writing. You are

⁹The self-discipline of writing is excellent training in rigorous thinking. The lawyer who tries to be precise and clear in his writing may find that he must think a point through more thoroughly before he can make an ambiguous statement more clear. The reason he put it into fuzzy words in the first place was that the thought was fuzzy. Trying to say it clearly helps him perceive that he does not himself understand it clearly, and so spurs him to master his subject more completely. To write properly, one must both think properly and interpret properly. 'In fact, expression is an essential part of truth, and the art of expression is the practical part of the art of thinking.'" H. Weihofen, Legal Writing Style 7 (2d ed. 1980) (quoting Armiel, *Journal*, Mar. 27, 1854, quoted in Rickard, Technical Writing 200 (3d ed. 1931)).

¹⁰See MacCrate, Paradigm Lost - or Revised or Regained, 38 *Journal of Legal Ed.* 295 (1988) (explains Kuhn's theory of the importance of paradigms).

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professional writers. You write more than most novelists.¹¹ You should insist on professional quality in everything you do.¹² The professional legal writer, in striving for excellence,¹³ needs professional writing tools, professional writing time, and professional writing standards.

The primary thrust of this aspiration is to encourage legal writers to view themselves as professional writers. Consider the typical professional writer, such as a scholar, novelist, or poet. Do you not think of certain admirable characteristics, such as intellectualism, fierce independence, and dedication to high standards? And don't you believe that these professionals insist generally on controlling their working environment, work quality, and ultimate conclusions? I have a recurring image of the dedicated writer striving laboriously over passages in search of just the right word, creating just the precise mood, and evoking the desperately desired reader reaction. Remarkably, all of this time and effort is accepted in the mature appreciation that only the professional, though lengthy, process will produce creditable writing.¹⁴

¹¹Prosser, English as She is Wrote, in Advocacy and the King's English 738 (1960) ("the average lawyer in the course of a lifetime does more writing than a novelist.")

¹²Finally, there should grow the most austere of all mental qualities; I mean the sense for style. It is an aesthetic sense, based on admiration for the direct attainment of a foreseen end, simply and without waste. Style in art, style in literature, style in science, style in logic, style in practical execution have fundamentally the same aesthetic qualities, namely, attainment and restraint. The love of a subject in itself and for itself, where it is not the sleepy pleasure of pacing mental quarter-deck, is the love of style as manifested in that study. Here we are brought back to the position from which we started, the utility of education. Style, in its finest sense, is the last acquirement of the educated mind; it is also the most useful. It pervades the whole being. The administrator with a sense for style hates waste; the engineer with a sense for style economizes his material; the artisan with a sense for style prefers good work. Style is the ultimate morality of mind.

J. Williams, Style 247 (1985) (From "The Aims of Education" in The Aims of Education and Other Essays by Alfred North Whitehead. Copyright 1929 by Macmillan Publishing Co., Inc., renewed 1957 by Evelyn Whitehead. Reprinted with permission.)

¹³The pursuit of "Arete," Greek for excellence and goodness, is as an ancient goal that is too often forgotten in many law offices today.

¹⁴Recent readings of poetry,

"Let us go then, you and I,
When the evening is spread out against the sky ..."

T.S. Eliot, The Love Song of J. Alfred Prufrock, The Waste Land and Other Poems 3, (1962),

and of prose,

He is anxious; he is threatened from every side. Each stranger he passes is a reproach to him, every doorway a threat. What is wrong? he wonders. She is unhappy but for a different reason, because he is unhappy and she knows it but doesn't know why.

Walker Percy, The Moviegoer 15 (1961).

remind me of the strength of the carefully placed written word.

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Contrast these images with what you know is often the reality in many law and administrative agency offices. Unconscionable abuses to the writing and reasoning processes abound. Sometimes the abuse extends to the dignity and professionalism of the writer.

We all know about the workloads and deadlines that flatten our prose and our spirits. But some administrative law judges have portrayed more horrifying tales to me. For example, a few state agencies mandate the use of forms and instructions that require the writer to omit explicit steps in the reasoning process, intended as a technique to frustrate appellate review. This is unconscionable to a scholar! One ALJ reported to me that his supervisors had instructed all judges in that agency to ignore parts of the relevant law, in order to rule in a particular way, in spite of manifest legislative intent and cogent reasoning to the contrary. Such disservice to the parties and the public interest degrades the writer and our legal process.

Less outrageous conditions include standardized and sanitized forms that are steeped in lengthy statutory or regulatory passages, whose language is vague and impersonal. In many of these forms, no known actor is allowed to exist. The denial of benefits, for example, is simply a necessary, passive conclusion rather than the justifiable result of clear, logical, and reasonable application of law to facts by a live and attentive judge.

Of course, the most common foe is the less odious but still destructive mentality that values quantity over quality work. In many offices, heavy work loads and unrealistic deadlines suffocate intelligent activity.

Noteworthy exceptions exist; many dedicated, intellectual judges and directors have echoed the pleas for a return to professional and intellectual integrity. Unfortunately, these successes seem to be far outnumbered by reports of government bureaucracies concerned more with processing paper and data than in serving citizens.

We should embrace the more professional model and insist on professionalism in every aspect of our work. We should reestablish some form of loyalty to transcendent values. We should embrace the professional model in all that we do, from our desks, our forms, our schedules, our standards, to our independence! If supervisors insist on mindless, illogical, unclear decision writing, we must look them squarely in the eyes and challenge this public disservice for what it is. We should declare our independence!

Achieving this independence will invoke numerous changes in attitude and methodology. The most fundamental strategy in this effort will be the selection and reordering of professional standards for our writing. In this discussion, we must first define the standards for judicial decision writing. To evaluate the effectiveness of a judicial

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decision, we must assess how well the decision accomplishes the primary functions or goals we intend.¹⁵ Judicial decisions should do the following:

1. Announce clearly the result of the contested issues.
2. Explain the reasons why the result is the most appropriate or best solution to the question posed.
3. Assure the readers that the decision was the result of full and careful review of the law and relevant facts.
4. Show what facts and law the decision maker considered important and not so important.
5. Clarify the issues, facts, and law for a reviewing appellate court or board of review.
6. Articulate the legal principle(s) clearly for future trial judges, lawyers, and potential litigants.
7. Explain the legal holding in a manner understandable to the public.

How do we more adequately pursue these goals? It's easy. We get serious about them, our writing, and ourselves. We begin by knowing that these goals cannot be achieved with rushed, assembly line/industrial grade writing. We reject the status quo, and we get back to basics. These details will be discussed more fully below, but you would be surprised to learn how many legal writers know so little about writing process and technique.

Most lawyers have never been taught that certain professional writing tools should be employed to assist them in their task. The worn metaphor comparing legal craftsmen to carpenters is nonetheless apt. You cannot fashion attractive, solid structure without the professional tools. You can produce high quality writing and high quantity writing at the same time only if you use today's modern writing resources along with the traditional tools. First, modern word processing equipment has revolutionized the craft of writing as surely as the invention of the printing press revolutionized printing and publishing centuries ago. We now have the freedom to revise and edit to our heart's content, as we never did before. Add to that the modern use of standard formats and such software niceties as " Spell Check " and " Write Righter, " and we have infinitely greater ability to craft and reshape our product. The " last minute " is no problem with word processing. The previous generation of writers was inhibited by the necessity to retype

¹⁵For a detailed analysis of the anatomy of a judicial opinion and quality judicial writing, see Joyce J. George, *Judicial Opinion Writing Handbook* (1981); Stern, *The Writing of Judicial Opinions*, in *Advocacy and the King's English* 835 (1960); Hugg, *Judicial Style: An Exemplar*, 33 *Loy. L. Rev.* 865 (1987).

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entire pages to enter even minor revisions. No longer! Editing every piece ten or more times, and even right up to the last minute, is now normal procedure.¹⁶

The second essential principle is that the professional writer's desk should be equipped with the necessary materials before approaching any opinion. This maxim seems so simple, but many novices¹⁷ start to work without the minimum references and materials. These professional desk " necessities " include all the necessary filings in the case, agency rules and regulations, a style book, a dictionary, a thesaurus, and additional writing improvement books.¹⁸ This is no trite recitation to use a style book and a dictionary. If your desk is not equipped with all of these resources, you will not consistently produce quality writing.

The third principle is that the professional writer should carve out the time and create the appropriate atmosphere to produce professional work. A door with a lock and a " Do Not Disturb " sign are musts. This will send a symbolic message to your peers and to your own subconscious who's in charge of your written work. Furthermore, your desk must be large enough to work on without breaking your project into pieces and without causing " layering. "¹⁹ You must have peace and quiet in which to think—accept no less.

Of the desk " necessities " previously mentioned, one deserves particular attention: the style book.²⁰ Often well-educated people think that they do not always need to use a style book in their writing. This belief reveals a naive misperception of the writing process. Few of us possess the memory and have the experience to work artistically with our language without frequent reference to support material.²¹

¹⁶And for citing authority, the Cite Right software pinpoints errors and instructs us regarding strict Blue Book rules.

¹⁷And frankly, a surprising number of not-so-novice writers!

¹⁸See attached bibliography for additional writer improvement books.

¹⁹That destructive phenomenon that occurs when several different projects pile up on the desk in front of the writer.

²⁰Two style books that have been adopted by several law reviews and many lawyers are the Texas Law Review Manual of Style and Strunk and White's The Elements of Style. For an entertaining discussion of the merits of the Texas Law Review Manual On Style, see Lindgren, Fear of Writing, 78 Calif. L. Rev. 1677 (1990) and Moody & Feldman, Greetings From Hell, 78 Calif. L. Rev. 1703 (1990).

²¹Here's the question that recently reminded me that I needed my style book. A student presented the quoted sentence in a rough draft. I was not sure if it was written correctly. "The analysis will show that ones rights can be violated in many ways." We all know the It's and Its dichotomy ("It's a bad way to start a sentence." The corporation filed its return on time.") and the general rule that pronouns do not need an apostrophe to show possession (hers, theirs, yours, and ours), but I had to remind myself that indefinite pronouns do not use the apostrophe to show possession (one's rights, somebody else's umbrella). Most readers would not recognize the improper usage, but some critical readers would. Do not accept anything less than the confidence of certainty.

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Occasionally, a question presents itself that is not satisfactorily addressed in the brief style manuals, thus requiring recourse to the more detailed treatises of usage. Webster's Dictionary of English Usage (1889) is a favorite. As a professional legal writer, insist on having your reference books at your fingertips.²² In summary, resolve to start today to transform your whole view of your writing--from self-esteem, to process, to tools. You may not have sufficient authority or resources to do it all immediately, but begin to make the changes. Buy a style book; insist on one more draft; review your old writing manual (see next aspiration). But begin today to be a better writer.

II. AS A PROFESSIONAL WRITER, LEARN THE PROFESSIONAL WRITER'S PROCESS. THEN, DEDICATE THE SMALL AMOUNT OF TIME AND DISCIPLINE NEEDED TO KEEP YOUR WRITING TECHNIQUE CORRECT, PRECISE, AND FRESH.

The professional writer approaches the writing project with an understanding of the distinct components of the writing process. When broken down into its smaller, more easily accomplished parts, the overall project becomes less onerous, less intimidating, and more approachable. This eliminates much of the destructive stress that frustrates so much of our thinking and writing. Many writing instructors recommend the three desk approach to help writers discipline themselves as they work through the process. I find this approach useful and wholeheartedly recommend it. This mental division of the labor requires the isolation of three separate components to the overall process, each to be accomplished at a separate conceptual desk.

The first of these imaginary desks is by far the most difficult: this is the Prewriting Desk. In this component of the process, the writer gathers the facts and the legal rules, then performs the legal analysis to the point of a detailed outline.²³ As we all know, the bulk of the work is done here. In this component, you proceed slowly, step by step through the essential functions. You review the facts, then explore them in relation to the law. You verify your law, ultimately articulating concrete, specific issues. Finally, you exhaust the research and conduct full analysis of all the law and your issues. A full and comprehensive written outline demonstrates the thoroughness and soundness of that analysis.

But you have not yet begun to write the text of the memo or opinion. Beware the alluring trap! Discipline is the key. Do not leave this first desk without a

²²Take this literally; store your key references on your desk. In a weak moment, we all have resisted even minimal effort to verify precise meaning or usage.

²³Professor Clyde Emery's A Streamlined Briefing Technique, published by the American Bar Association, presents one of the most insightful and thorough exposition of basic research and analysis technique that I have seen.

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detailed written outline of your paper. If you move to the writing desk, but find yourself returning to the first desk's analytical process, stop immediately. Return to the first desk, because the all-important analytic process obviously was not completed at the first desk. If the writer begins to mix up the work from the different components, chaos and stress results. This confusion of functions is the source of much of the writer's frustration.

The second desk is called the Writing Desk. Here, the writer simply pours out the substance of the detailed analysis fashioned at the Prewriting Desk. The writing is done informally and in a relaxed manner. You follow your detailed outline carefully and compose the clearest and most direct explanation of your reasoning. You are not attempting to write final, perfect prose. Relax! Rewriting and revision come later. The purpose here is to follow the outline produced at the first desk, and just to get it all down on paper. When faced with questions of relevancy, diction, or other concerns, include it all. The editing and rewriting process will resolve these issues later.

The final desk is the most enjoyable for the writer—the rewriting and revising is accomplished at what we call the Rewriting Desk. Here the writer streamlines, alters diction, adds transition, shapes paragraphs, and generally lends an artistic touch to the writing. Often, editing is extensive. Entire sentences are deleted, words substituted freely. Flow of meaning and logic is now the goal. Sometimes, one introductory sentence can be added to blend two paragraphs into a meaningful discussion. Add transitional words and phrases.²⁴ This final desk is where the corrective surgery works its magic.

At this stage of the process, the professional writer's greatest fear and greatest opportunity materialize. More often than we'd like to admit, our difficulty in revising leads us, although reluctantly, to the suggestion that we did not have the analysis clearly formulated when we outlined it at the Prewriting Desk or when we expanded it at the Writing Desk. Further to our chagrin, we have learned that sometimes an entire section of the writing must be totally rewritten. This generates agony because we do not want to throw away our own work product. But professional writers know that we must! The newly rewritten text will be the clearest. This catharsis is a necessary part of the process, and the sooner we learn to live with it, the less suffering we will have to endure.

Here's a tip to help you avoid the problem. When you sit down to begin writing at the imaginary Writing Desk, always ask yourself the difficult question: Is my written outline explicit and complete? Could a newcomer to the case understand the analysis fully from reading just the outline? If the answer is not a definite "Yes," force yourself back to the Prewriting Desk for more analysis or research. Your reasoning may be half-baked. You want flaws to surface early, not later at the Writing Desk. The outline will reveal these problems only if you insist on crafting a detailed, explicit explanation of

²⁴See L. Squires & M. Rombauer, Legal Writing 58-62 (1982) (a wonderful, extensive list of transition words and phrases).

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your analysis in the outline. As is obvious, this stage accounts for the most time-consuming work. Resist the temptation to move on to the actual writing until the analysis is complete. You cannot write clearly what you have not thought clearly. You will experience the beauty of this process and the ease of the writing function only when you strictly follow the division of labor.

Once you are satisfied that you're ready to write, apply the following rules of basic writing to your work. Remember! The paper is blank! You enjoy absolute freedom—total creativity in drafting and crafting your word choice, phrases, sentences, paragraphs, syllogisms, arguments, and the entire memo.

The Basic Technique

The basic sentence structure should be followed where possible. The "subject-verb-object" construction is clearly and readily understood. Make this your model. More often than not, the writer should use short sentences. Also, prefer the active voice; meaning and force move in the expected manner. Strive to use plain English. Everyday and concrete words are preferred, and jargon should be avoided. Choose strong verbs and avoid man-made verbs and nominalizations. Strive to use a minimum of "to be" verbs. Finally, edit out all surplus words.²⁵

Once your sentences are in satisfactory form, they should be linked together with substantive and formal links. Most law students are not taught this. You should ask whether each sentence naturally and logically follows or arises from the previous. Many writers fail to honor this necessary rule. Also question whether you have signaled the connections and relationships to the reader with transition words, phrases, and sentences. The reader should glide through the prose with minimal effort.

The preferred paragraph structure is simple. As a general rule, use short paragraphs and topic sentences. Short paragraphs promote clarity and give the reader

²⁵Writing texts offer these rules in many forms, see the appendix for list of excellent contributions to the area, but I am especially fond of the Fowler's version:

Anyone who wishes to become a good writer should endeavor, before he allows himself to be tempted by the more showy qualities, to be direct, simple, brief, vigorous, and lucid.

This general principle may be translated into practical rules in the domain of vocabulary as follows:

- Prefer the familiar word to the far-fetched.
- Prefer the concrete word to the abstract.
- Prefer the single word to the circumlocution.
- Prefer the short word to the long.
- Prefer the Saxon to the Romance.

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visual guidance. Topic sentences help guide the reader.²⁶ Once the sentence and paragraph structures are in order, the overall analytical reasoning must be evaluated for coherence and logic.

The effectiveness of the writer's analytical expression can be determined by answering three questions. First, are the questions clearly expressed and squarely addressed? Second, has the written analysis followed IRAC (Issue, Rule, Analysis, and Conclusion) or some other alternative strategy?²⁷ Third, is the major issue first?

After completion of the initial full draft, the writing should be reviewed, checking for full analysis and clear expression. The whole work can be brought together with a clear introduction and conclusion. The inclusion of a thesis sentence in the introduction or a thesis paragraph at the beginning of the work will tell the reader where you are going and serve as a guide throughout the paper. You should check for logical coherence. Be sure to check your style book for help with detailed revisions and precise corrections.

Finally, proof the paper one last time. Ferret out all typographical errors. Polish out the rough edges, and fine-tune stance and mood. You always have time for one final proofing.

At some point you have to let it go.²⁸ Hope that you have achieved a measure of excellence before the clock strikes twelve.²⁹ Even though word processing now enables multiple and last minute improvements, you must reserve sufficient time for proofing. You cannot delegate that function away. You are the author and you are responsible for the quality or lack of it. You win the praise (whether in the form of self-satisfaction or otherwise) or you fall into the pit of mediocrity. The choice is yours.

Editing Tips

As you edit, be alert for some specific technical problem areas. In my experience I have found several specific problems worth warning the professional writer about. As part of your changing view toward your writing, several "editing tips" are

²⁶A simple explanation of the paragraph's goal adds so much to ease the reading. For example, "The statute requires these elements..." or "The referee's decision will be upheld because it was reasonable and supported by the evidence."

²⁷E.g., Richard Neumann's paradigm analytical structure, Legal Reasoning and Writing 112 (1990).

²⁸Some writers insist that there is no such thing as a "final draft," but only the last draft before the deadline forces you to submit the product.

²⁹Yes, some literary allusion easily understood is acceptable, if not enjoyable, in legal writing.

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provided here to aid you in your task of getting away from industrial grade writing.³⁰ The first is a concept to add maturity to your work. Here's the thought: Do not let rusty writing skills slow down your intellectual efforts. Don't disdain the study of writing. You cannot avoid the technical, complex rules for correct and precise writing, so you should make the best of this fact of life and try to do better than the average poor soul who shares our difficulties with writing. One writing expert offers an interesting quote about this one aspect of this problem:

Grammar is to the writer what anatomy is to the sculptor, or the scales to a musician. You may loathe it, it may bore you, but nothing will replace it, and once mastered it will support you like a rock.³¹

The second editing tip is to trim the fat from everyday phrases. Many of the writing texts listed in the Bibliography of these materials target the archetypical offenders in this writing category. Here are a few examples: "in order to" should be replaced with "to," "for the purpose of" with "for," "prior to" with "before," "until such time as" with "until," "by means of" with "by," "in favor of" with "for," and "for the reason that" with "because." Most style books will provide lists for this "fat trimming." A related editing tip is that you should strike diluters! Some words always weaken the force of your writing. Strike them to promote clarity and force in your sentences. Very, quite, and rather are the worst.³²

Although the number of "editing tips" available may be considered astronomical, I offer a few more common tips to help you in your daily process. All of the experts will urge you to use the active voice rather than the passive, both in objective writing and in persuasive writing. As Ray and Ramsfield explain:

The active voice keeps the reader's eye moving forward and clarifies both the subject and the action. The active voice thus promotes clarity and precision. The passive voice, on the other hand, makes the reader's eye move backwards because the subject of the sentence receives the action, rather than causes the action. As a result, the passive voice forces the reader to stop at the end of the sentence and think back

³⁰I recommend Judge Gee's A Few of Wisdom's Idiosyncrasies and a Few of Ignorance's: A Judicial Style Sheet. 1 *Scribes Journal of Legal Writing* 55-61 (1990). This article was prepared for the *Scribes Journal* by the Honorable Thomas G. Gee of the United States Fifth Circuit Court of Appeals, and is based on a style sheet originally prepared by the Honorable John Minor Wisdom.

³¹William L. Rivers, Writing Opinions: Reviews 75 (1988) (quoting B. J. Chute).

³²As examples: "I was very angry" is weak in comparison to "I was outraged" or simply "I was angry." As another example: "I was quite impressed by the presentation," is weak in comparison to "I was intrigued by the presentation." To assist you in this editing process, refer to your desk "necessities." (style book, thesaurus, etc.).

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through the sentence to sort out who did what.³³

The passive voice is dull, too. As Professor Robert Smith illustrates:

The only construction duller than the passive voice is the double passive: " the case is scheduled to be argued on Tuesday; " or, " the game was ordered to be started. " A dozen of these will put anybody to sleep. Try " counsel will argue the case Tuesday; " and " on the Referee's order, the game started. "³⁴

Although the passive voice does have its disadvantages (it takes more words and has a potential for ambiguity), it can be useful in certain situations. The writer may use the passive voice in the writing process of selection and emphasis, for example to de-emphasize unfavorable facts or law. The passive voice may also be used to conceal the actor³⁵ or when the actor is unknown. It can be used when the subject is long or when the subject is less important than the object. The passive voice is particularly useful when the thing done is important and the one who did it is not. Finally, you can use it to place a strong element at the end of the sentence for emphasis. For example, " Upon arrival at work Monday morning, Mr. Smithson was immediately fired. "

Another tip for the advanced writer is the proper choice between " where " and " in which. " Where designates a place and should not be used to introduce what happened in a particular case. For example: " Jones, a case in which the plaintiff..." is the proper method and should be used instead of " Jones, a case where the plaintiff...."

Another helpful guide is the " No Flash " rule. Remember the old trial lawyers' maxim about your clothes at trial? Never wear flashy or fancy clothes when addressing a jury because it will draw attention away from your substantive presentation. The same is true for your writing. George Orwell expressed it well: " Good prose is like a window pane. "

This view of good writing will help bring us to a better appreciation of professional writing. Good writing is not meant to show off, but rather to communicate effectively. Professor Weihofen stresses this concept:

The ideal style is one that the reader will least notice... What [readers] will appreciate most is a way of writing that allows them to comprehend the substance

³³Ray & Ramsfield, Legal Writing: Getting It Right and Getting It Written 139 (1987).

³⁴R. Smith, The Literate Lawyer 18 (1986).

³⁵This is an habitual misuse by many ALJs in their opinion writing.

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without noticing the form. It is bad usage that is noticeable. Even if it does not mislead or confuse the reader, it calls attention to itself and away from the message.³⁶

Professor Weihofen illustrates the point with an anecdote about Cicero. When friends told Cicero that he was the greatest of orators, he replied somewhat as follows: " Not so, for when I give an oration in the Forum people say, 'How well he speaks!' but when Demosthenes addressed the people they rose up and shouted, 'Come, let us up and fight the Macedonians!'"³⁷

Dr. Samuel Johnson made this point over two centuries ago. He said: " Read over your composition, and when you meet with a passage that you think is particularly fine, strike it out. "³⁸ Our vanity gets in the way occasionally, but we should remember the fundamental principle that we write to communicate clearly—not to impress with form.

This principle about smooth presentation was driven home to me recently as I was preparing these materials. I was reading a Hemingway short story with the explicit purpose of highlighting his smooth style and lively diction. Suddenly, I found myself five pages into the text, having a grand time in the story, before I remembered what I was doing. That's good writing. You do not want your reader to exclaim, " Oh, what eloquent prose! " To the contrary, you want the reader to follow your reasoning and agree, " That's right! That's solid reasoning. "³⁹

Here's another editor's fine distinction. Be aware of the proper uses of Because, Since, and As. Technically, they do not mean the same thing, and they may cause some loss of precision when misused.⁴⁰ I follow a somewhat rigid rule recommended by Ray and Ramsfield.⁴¹ Use since only to show that something follows in time. For example: " Since he has been on the bench, he has ruled for the plaintiff only once. " Use because when you mean cause of something. This seems simple, but observe the ambiguity when as is used improperly in the place of because or since: " The audience

³⁶Weihofen, *supra* note 9, at 5.

³⁷*Id.*

³⁸J. Bartlett, Familiar Quotations 235 (1944).

³⁹Hemingway's short story that I recommend to you is The Short Happy Life of Francis Macomber. You'll be intrigued with the unfolding of the conflict between a man and his wife on safari in Africa, and then you'll love the surprise ending.

⁴⁰At least one author believes these distinctions are "grammatical folklore." Unfortunately, many of the strongest defenders of this strict usage are old, crusty literary types, such as appellate judges and senior partners in law firms.

⁴¹Ray & Ramsfield, *supra* note 33, at 24.

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applauded as the speaker concluded. " Does this mean because the speaker concluded or simultaneous with the conclusion? Another example, " Since the trial ended, the parties have reconciled. " Does this mean because the trial ended that they have reconciled, or did they reconcile after the trial? These examples illustrate the potential problems facing the reader when the writer misuses because, since or as. Remember, precise word choice speeds comprehension and insures accuracy.

In their popular new book, Tom Goldstein and Jethro K. Lieberman tell us to avoid " Latinisms, Pomposities, and Bureaucratese. " ⁴² These terms are well known to you, so this should be an easy way to improve your writing. But also watch out for jargon. Jargon is specialized, often technical, language used by members of a profession or specialty group. They understand its meaning, but outsiders have no reason to know of its existence, much less its meaning. The communication problem comes when the jargon is used outside of the group. The new reader hasn't a clue about what the term means. A sophomoric notion that this " high tech " language impresses people should be dispelled—readers are more likely to resent it.

Legalese is nothing more than jargon used by legal writers. ⁴³ " Legalese includes both specialized words unfamiliar to nonlegal readers, such as 'estopped,' and flowery words that (1) are unfamiliar to the reader, such as 'abovementioned' and 'heretofore,' and (2) could be avoided by using a more familiar word, such as 'this' or ' previously.' " ⁴⁴ The overuse of " such " and " said " are other examples. These may be the worst offenders of all. " Consider, for example, the word said in its archaic use as an adjective. No lawyer in dinner table conversation says: 'The green beans are excellent; please pass said green beans.' Yet legal pleadings come out like this: The object of said conspiracy among said defendants was to fix said retail prices of said products in interstate commerce. " ⁴⁵

Much of the lawyer's stilted usage may be smoothed out during the editing process. During this editing process, several additional style tips may prove helpful; one that finds widespread application in ALJ writing addresses is " the essential that. " ⁴⁶ Squires and Rombauer offer an example:

⁴²Goldstein & Lieberman, Lawyer's Guide to Writing Well 119 (1989).

⁴³Ray & Ramsfield, *supra* note 33, at 92.

⁴⁴*Id.*

⁴⁵R. Wydick, Plain English for Lawyers 54 (2d ed. 1985).

⁴⁶Squires & Rombauer, *supra* note 24, at 81.

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The complainant has the burden of proving the rates violate the statute. (The reader wonders initially how the complainant will "prove rates.")

Revised:

The complainant has the burden of proving that the rates violate the statute.⁴⁷

The word "that" is not an extra clue in these instances, but rather an essential structural signal.⁴⁸ Without this essential word, the reader may have to reread the sentence for initial comprehension.⁴⁹ We must remember that any time readers must go backwards to reread we risk losing their attention—a fatal risk for lawyers.

I agree with Professor Robert Smith that "[e]diting is the single most critical skill of the legal writer."⁵⁰ Cutting and altering, even throwing away, your own prose is difficult but absolutely necessary. "Nothing comes out right the first time; only in the process of pruning and revising does real excellence appear."⁵¹ Professor Smith's rules of editing are among the best I have seen, and I offer them here.

1. Never tolerate a minor error in grammar, punctuation, spelling or syntax; such errors cry out to the world that the writer is ignorant, sloppy or unprofessional.⁵²
2. Edit above all for precision of expression and clarity of meaning. Style is secondary.
3. Make certain the piece flows logically. It is easy for the writer to lose track of the logical progression: you are very close to your work; you know where your stream of logic began, and know where it is supposed to end. It is easy to leave out a step in reasoning, since you know your subject so well. Make certain your paper is a logical step-by-step exposition of your reasoning, from first premise to conclusion.

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹Here's an example from one ALJ's writing:

"He testified he tried on the suit." The reader may be slowed on first reading, wondering if the double subject-verb combination was an error--He testified he tried.

⁵⁰Smith, *supra* note 34, at 1.

⁵¹*Id.*

⁵²I would eliminate the "such" ("these errors cry out to the world ..."), but my zeal sometimes overwhelms my judgment.

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4. Use headings and subheadings. Nothing makes a piece organize and flow better than good headings, and enough of them.
5. Use the active voice.
6. Use plain, vigorous Anglo-Saxon verbs, and do not make nouns out of them.
7. Use short words, short phrases, short sentences, short paragraphs. Break every sentence and paragraph into bite-sized pieces. Remember the rule is not " only one paragraph to a subject; " it is " only one subject to a paragraph. "
8. Be consistent in number, tense, and case.
9. Keep your modifiers close to what they modify.
10. Always prefer the simple, everyday word to the arcane, the archaic, or the jargon word. Do not show off your vocabulary.
11. Be exact. Spend as long as it takes to find the precise language that will express your idea; remember Mark Twain's maxim:

The right word is to the almost right word as lightning is to the lightning bug.

12. If a word can be cut, cut it.⁵³

Professor Smith reminds us that editing is a constant, tedious process of reading and rereading the work. But, it is impossible to avoid it. When reading, keep your audience in mind. Read the paper through once quickly for " flow, logical organization, and good sense. " ⁵⁴ The second time through edit for " spelling, punctuation, syntax, clarity, and flow. " ⁵⁵ If time permits, set the piece aside for a day before you pick it up again. If the piece is yours, have someone else read it. If the piece belongs to someone else, be careful. " Edit, by all means, but be wary of changing the writer's meaning. " ⁵⁶ You may only have to polish the piece up.⁵⁷

⁵³Smith, *supra* note 34, at 1-2.

⁵⁴*Id.* at 2.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

III. AS A PROFESSIONAL WRITER, FAMILIARIZE
YOURSELF WITH ADVANCED WRITING
TECHNIQUES. SOME YOU MAY USE EVERY
DAY; OTHERS LESS OFTEN.
BUT CULTIVATE YOUR WRITING POWER.

We all realize that we cannot dedicate hours every day to muse over the finer and more subtle aspects of writing. Nonetheless, we can significantly enhance our day-to-day writing ability by taking a few minutes each day or so to refresh our memories about both basic and more sophisticated writing techniques. Many of these we use naturally but without planning or conscious choice. Others we forget from disuse; some we never really learned at all. If our writing is to be a carefully crafted and creative product, we must keep the varied alternative techniques and forms at our fingertips. Much like the artist, the more colors we have available on the palette, the more precise and creative we can be. The following represent a few of the more common and helpful structures available to the legal writer.

Parallelism is a wonderful, useful technique. I find myself using it more and more; I find that it adds flow and some grace.⁵⁸ Parallel structure is a writing technique by which words, phrases, and clauses are constructed in similar form to illustrate their parallel or similar meaning. "The likeness of form enables the reader to recognize more readily the likeness of content and function."⁵⁹ As stressed previously, ease of comprehension is a primary goal for good writers. Ray and Ramsfield give examples of the many parallel uses, including the following. For example, parallel adjectives can portray related attributes or characteristics. "Defendant was hostile, abusive, and violent."⁶⁰ Parallel prepositional phrases can describe parallel situations. "The employee admitted that she was operating the machine without the safety shield in place, without her goggles, and in violation of the company rules." Ray and Ramsfield explain that "Parallel structure creates a grammatically transparent framework that allows substantive points to shine through in clear relation to each other. This structure is extremely useful in legal writing because it simplifies syntax and focuses on substance."⁶¹ Here's an easy example of parallel use of verbs: "He came, he saw, he conquered."⁶² These uses of parallelism also demonstrate our fascination with "trinities" – we seem to enjoy threesomes in many

⁵⁸See Weihofen, *supra* note 9, at 132. Weihofen provides excellent and eloquent examples, including grand, well-known illustration such as "First in war, first in peace, first in the hearts of his countrymen."

⁵⁹W. Strunk, Jr. & E. White, The Elements of Style 26 (3d ed. 1979).

⁶⁰Ray & Ramsfield, *supra* note 33, at 135.

⁶¹*Id.*

⁶²Squires & Rombauer, *supra* note 24, at 79.

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things.⁶³

A more subtle use of parallel structure is comparing or contrasting cases.⁶⁴ Similar paragraphs, tracking analytical steps in parallel fashion, add clarity. Parallel structure is also a useful technique for adding emphasis.⁶⁵

Note, parallel components must be consistent, both substantively and grammatically. Otherwise, the literary effect will be distraction. For example, this series of adjectives produces imbalance: " apples, oranges, and kidnapping Saddam Hussein. "

Here's an example of faulty parallelism taken from an attorney's writing:

Counsel's deficient performance will have prejudiced the defendant if it can be shown that counsel's errors were so serious as to deprive the defendant of a fair trial, one whose result is reliable, and both showings must be made in order to prove that counsel was so ineffective as to require reversal.

Here's a stab at salvaging the sentence:

To require reversal, the defendant must show that his counsel's performance so prejudiced his defense that it deprived him of a fair trial with a reliable result.

A final example:

The opinion draft reveals the staff attorney's penchant for civil rights, but not to protect due process rights of corporate defendants.

Rewrite:

This opinion draft reveals the staff attorney's penchant for protecting civil rights, but not for protecting due process rights of corporate defendants.

As we all know too well, another fundamental literary technique often employed by lawyers who write entreaties to judges is the use and misuse of basic logical forms. Judges must be ever-cautious not to be influenced by improper arguments. Lawyers are notorious for manufacturing sophistic arguments, so superficially appealing

⁶³Weihofen, *supra* note 9, at 321.

⁶⁴Ray & Ramsfield, *supra* note 33, at 135.

⁶⁵*Id.* at 136.

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but substantively unsound. Accordingly, you should be well-schooled in the tricks of the trade. Former Third Circuit Chief Judge Ruggero J. Aldisert recently published an insightful treatise on legal reasoning, Logic For Lawyers.⁶⁶ I recommend it enthusiastically. The treatment is comprehensive and supported by numerous, vivid examples in legal writing. Judge Aldisert admonishes sophisticated readers to be wary of the more common deceptive uses of the following logical fallacies.⁶⁷ They range from the obvious to the subtle.

A. Appeal to Pity.

" The poor defendant who grew up in a broken home as one of thirteen starving children ... "

B. Appeal to Prestige. This interesting usage is found in many forms of legal writing.

" As the revered Justice Brandeis expressed in his oft-quoted Harvard Law Review article ... "

The skilled reader will not automatically attach greater weight or credibility to an argument merely because of references to respected judges, statesmen, or institutions. All too often, the reference or quote is more precisely discovered to address only obliquely the argued point. Often these propped up references refer merely to dicta, and offer no real additional authority for the stated contention. When you see this villainous technique, brace for deception.

String cites, the overuse of footnotes, and excessive length can be other attempts to impress the reader on a basis other than the merits of the case.

C. Appeal to Personal Ridicule.

" The plaintiff, an ex-nazi and leader of the Ku Klux Klan ... "

D. Appeal to the Masses.

" Generations of Americans have honored their inalienable right to bear arms. Your grandfather, father, and brothers and sisters, the rich and poor alike ... "

This can approach the Argumentum Ad Nauseam.

E. Appeal to the Ages.

⁶⁶R. Aldisert, Logic for Lawyers. A Guide to Clear Legal Thinking (1989).

⁶⁷*Id.* at 176-187.

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" From the Ancient Greeks to the Founding Fathers, " translated into the notion age is wiser than youth, old things more valuable than new.

The sophisticated reader should be wary of anything other than the plain, clearly expressed truth.

One of the more effective tools of the modern writer is the studied use of Emphasis. All writing contains this; we write with it naturally. But, again, to be a professional writer we must use it thoughtfully, with understanding and care. When emphasizing a point, you want to emphasize the substantive content, not the form of the writing itself. For this reason, avoid exuberant overuse of any techniques. With that caveat in mind, try using one or more of the following ways to emphasize your point. Again, experts Ray and Ramsfield offer useful guidelines.

1. Put the point to be emphasized at a position of emphasis: the beginning or end of a sentence or a paragraph. Conversely, bury phrases you want to de-emphasize in the middle,⁶⁸ because the middle of sentences, paragraphs, and even whole sections get less attention than the beginnings or ends.⁶⁹

Joseph Williams agrees with Ray and Ramsfield that the most popular use of emphasis is to place words of emphasis or importance at the end of a sentence. Williams quotes T.S. Eliot's quip: " In the end is my beginning. "⁷⁰ Williams' excellent text, Style: Ten Lessons in Clarity and Grace, offers extensive helpful discussion of the use and grammar of emphasis.⁷¹

Ray and Ramsfield illustrate this first method of creating emphasis:

Whether the surveillance is electronic, optical, or human is irrelevant where there is no reasonable expectation of privacy. While on a public street, the defendant had no such reasonable expectation.

Ray and Ramsfield continue:

The beginning of the sentence can also provide emphasis.

⁶⁸We lawyers see this technique abused repeatedly in lengthy briefs and memoranda.

⁶⁹Ray & Ramsfield, *supra* note 33, at 65.

⁷⁰Williams, *supra* note 12, at 53.

⁷¹*Id.*

Deceit or treachery he could not forgive.

A subject coming first in its sentence may be emphatic, but hardly by its position alone.

Great kings worshipped at his shrine.

2. State the point to be emphasized in concrete, specific terms. Conversely, use more abstract terms to de-emphasize a point. When a point is stated in concrete or specific terms, the reader creates a mental picture of the point; this picture makes the point easier to remember. In contrast, something stated abstractly or generally does not leave a picture in the reader's mind and is less easy to remember.

When asked where he had been at 10:00 p.m. on the night of the assault, the alleged assailant looked away and mumbled, " Nowhere. "

Rather than:

When asked where he had been, he seemed uneasy.

3. Put the point of emphasis in a short sentence. Because short sentences are relatively rare in legal writing, they are particularly effective for emphasis. A short sentence will make a stronger statement and be easier to read. Both of these facts work together to make the point easier to remember.

The defendant then fired three shots.

Make affirmative assertions. Even negative ideas can be expressed in positive, therefore more formal, form.

The approach of the English courts is somewhat uncertain and less clear-cut than that of the American courts.

Rewritten:

The approach of the American courts is more clearly defined than that of the English courts.

Use caution with double negatives for understatement. They are not in vogue these days.⁷²

⁷²Ray & Ramsfield, *supra* note 33, at 65-66.

Not infrequently, not wholly unsuccessful.

Many legal writers never ever consider Emphasis as a tool in their work; they are overlooking an artistic and effective literary device.

Other more advanced techniques for the professional writer include figures of speech, such as similes and metaphors.⁷³ " Similes, metaphors, and other figures of speech are a kind of shorthand. They enable us to say more in fewer words, and to say it with vitality and color. " ⁷⁴ The figure of speech may entail illustrating a general proposition with a specific symbol.

The simile, the best known figure of speech, is used to show how one thing is similar to another by using the words " like " or " as. " ⁷⁵ We use similes all the time in casual conversation, for example: " smooth as silk. " The usefulness of this device is its enhancing and illustrating effect. It interests and entertains the reader when a fresh and insightful comparison offers a new view of a subject.⁷⁶ Good similes reveal some previously unnoticed characteristic or insight. Professor Weihofen instructs us that comparisons of different things can " get a slight shock of surprise " ⁷⁷ from the reader, and he cites an example from the writing of Mr. Justice Jackson:

There is no such thing as an achieved liberty; like electricity, there can be no substantial storage and it must be generated as it is enjoyed, or the lights go out.⁷⁸

The contrast of liberty to electricity effectively gets your attention, and then makes the point.

Similes should be used carefully. At the same time, do not take anything from the simile, use it with conviction.

" Somewhat like a lightning bolt " is flat.

The metaphor provides a more figurative comparison. It can be

⁷³See generally, Weihofen, *supra* note 9, at 116-120, 123-24.

⁷⁴Weihofen, *supra* note 9, at 116.

⁷⁵*Id.* at 117.

⁷⁶"Prose that delights us also instructs us more efficiently and effectively than writing that deadens our senses." Squires & Rombauer, *supra* note 24, at 194.

⁷⁷Weihofen, *supra* note 9, at 117.

⁷⁸*Id.* at 117, quoting The Task of Maintaining Our Liberties, 39 A.B.A.J. 962 (1953).

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stronger than the simile, more striking, and thus more forceful.⁷⁹

Metaphor describes one thing as another by referring to them as the same thing or in the same category. " All the world's a stage. "⁸⁰ or " The pen is mightier than the sword. "⁸¹ Remember that these are effective only when well done.

Be cautious of the classic and embarrassing mixed metaphor.
" They smelled a rat and nipped it in the bud. "⁸²

Always be alert to the literal meaning of your metaphor.⁸³ A poorly constructed metaphor can be embarrassing.

The most common figure of speech is also the most abused—the cliché. " Happy as a lark " will do nothing good for your reader or your writing. Avoid clichés.

Finally, Professor Smith cautions us to use figures of speech " judiciously and sparingly. They are no substitute for your own clear expression. At all cost avoid the banal, the grotesque, and the absurd. "⁸⁴

Repetition and reiteration are the clearest and probably the most effective techniques for emphasis. Often, the very fact that a word or phrase is repeated brings attention to it and can be used to your advantage.⁸⁵

The defendant stated this intention to his girlfriend. He stated it to his coworkers. He stated it to the cab driver who took him to the airport.⁸⁶

Professor Weihofen cites one of Churchill's speeches as a classic illustration.

⁷⁹Weihofen, *supra* note 9, at 118. See also Squires & Rombauer, *supra* note 24, at 194.

⁸⁰Webster's Unabridged Dictionary 1132 (2d ed. 1979).

⁸¹Weihofen, *supra* note 9, at 118.

⁸²Squires & Rombauer, *supra* note 24, at 194.

⁸³Weihofen, *supra* note 9, at 119.

⁸⁴Smith, *supra* note 34, at 19.

⁸⁵Ray & Ramsfield, *supra* note 33, at 178.

⁸⁶*Id.*

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Do not let us speak of darker days; let us speak rather of sterner days. These are not dark days: these are great days....⁸⁷

Your use of repetition need not be dramatic to be effective. Experiment with it occasionally; you may discover a new addition to your repertoire. Again, as with all techniques, remember that overuse will take away from its punch.⁸⁸

Experiment with and practice these techniques; they will enrich your writing. Do not attempt to create emphasis by punctuation alone, such as underlines or exclamation points.

Another technique of improving and advancing your writing is through the use of balance and symmetry. These provide a sentence with a movement more rhythmic and satisfying. This can be achieved by balancing parts of phrases and clauses against each other. Again, writing expert Joseph M. Williams explains and illustrates this use.⁸⁹

Neither the vacuous emotion of daytime soap opera nor the mindless eroticism of nighttime sitcoms reflects the best the American artists are able to create or the American audiences are willing to support.

Williams instructs: The richest kind of balance and parallelism counterpoints both grammar and meaning: here vacuous is balanced against mindless, emotion against eroticism, daytime against nighttime, soap opera against sitcoms, artists against audiences, able against willing, and create against support.

You can achieve the same effect when you balance parts of sentences that are not coordinated. Here is a subject balanced against an object:

Scientists who tear down established views of the universe
invariably challenge
those of us who have built up our visions of reality upon those views.⁹⁰

I highly recommend Williams' book; it is filled with excellent examples of ways to improve your style. Here's another in which the predicate of a relative clause

⁸⁷Weithofen, *supra* note 9, at 318.

⁸⁸*Id.* at 123-24.

⁸⁹See Williams, *supra* note 12, at 156.

⁹⁰*Id.*

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in a subject is balanced against the predicate of that subject:

A government that is unwilling to
listen to the moderate voices of its citizenry
must eventually answer to the harsh justice of its
revolutionaries.⁹¹

A direct object balanced against the object of a preposition:

Those of us who are vitally concerned about our failing school systems are not quite
ready to sacrifice
the intellectual growth of our innocent children
to
the social daydreaming of irresponsible bureaucrats.⁹²

This building block analysis of your sentence writing can lead to a new understanding of your writing. Although difficult, work in the area of your skills will strengthen your ability. Understatement, a sophisticated and powerful writing technique, is a favorite of mine. It is an effective tool of persuasion. Allow me to illustrate: If a car salesman tells you that an automobile model on the showroom floor is a great buy, he has asserted a **conclusion** to you, hoping that you might be persuaded to buy the car. Contrast the sophisticated salesman's pitch, in which he calmly recites to you fact after fact and then stops short of uttering the clear conclusion.

This car gets 32 mpg, has rack and pinion steering, power disc brakes, was Road and Track's car of the year two years in a row. My wife loves hers. It's \$3,000 less than the comparable Toyota.

He lets you make the leap to the conclusion. Then it is your conclusion! And you are hooked! This is the technique of understatement. It is especially effective among intelligent people. Think about it. Want to turn someone off—just tell them what to think. They will resist it. Here's a legal example:

" The facts clearly prove beyond question that the state regulation egregiously and unconscionably violates Ms. Adams' constitutional rights. "

Understate it!

These unique facts suggest that the challenged regulation was not carefully tailored to

⁹¹*id.*

⁹²*id.*

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accommodate the needs and expectations of the parties, the law, or society.

Contrast, sometimes called antithesis, means setting two opposing statements against each other for emphasis and impact.⁹³ It is an effective device, but takes a little thought; you must be sure the reader knows what is being contrasted with what. Keep your contrast sentence short and crisp, like a good aphorism. " Legislation must reflect public mores, and not mores legislation. "⁹⁴

" Bringing opposing ideas together in this way makes them stand out with bold distinctness, and so has more impact on the reader. A sentence in this form can be pithy and forceful. "⁹⁵

All of these techniques may seem a bit much at first consideration, but relax, and consider them over a period of time. Read about them in the wonderful texts cited, and try them out as you grow comfortable with them. You will witness your own growth as a writer. Squires and Rombauer summed up the best mental approach to these skills.

While neither lawyers nor their clients are willing to pay for literary skill for its own sake, one mark of an expert legal writer is the ability to use vivid examples, interesting similes, metaphors, or analogies. This ability grows out of a sensitivity to language, to how it sounds, and to what auditory and visual effects it has on the reader. It grows out of an awareness of human nature. Prose that delights us also instructs us more efficiently and effectively than writing that deadens our senses.

⁹⁶

IV. A Final Aspiration

A final theme—I strongly urge you to reconsider an old maxim for personal growth and enjoyment. Resolve to read more widely to deepen your reservoir

⁹³Weihofen, *supra* note 9, at 322.

⁹⁴*Id.*

⁹⁵*Id.* Weihofen offers additional examples of contrast.

To err is human; to forgive, divine. – Pope.

A cynic is a man who knows the price of everything and the value of nothing. – Wilde.

Let us never negotiate out of fear. But let us never fear to negotiate. – John F. Kennedy.

⁹⁶Squires & Rombauer, *supra* note 24, at 193-94.

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of words, phrases, styles, and imagery. Pleasure-reading also contributes to the reader's mental health because it promotes relaxation and a feeling of solitude. All this enhances your creativity and overall writing ability.

Block out a couple of hours a week (a minimum) for peaceful pleasure-reading. Short stories, best selling novels, even a bit of poetry will break the monotony of your legal reading and help you build a fresh sense of style.

You all have your own favorites, but here are a few recommendations just in case you'd like some "sure things."

Try Walker Percy's Thanatos Syndrome or The Moviegoer, Pat Conroy's The Prince of Tides, any of Twain's or Thoreau's writing. I especially enjoy Hemingway's short stories. Ellen Gilchrist and John Updike also are safe bets. It doesn't matter if it's Tom Clancy's Clear and Present Danger or George Will's conservative but well-written columns, read nonlegal prose regularly.

Finally, consider a touch of poetry. Wordsworth, the most well-known and important English Romantic poet whose primary interest was the mind of man, wrote about enjoying living, even finding pleasure in ordinary, natural things.

My Heart Leaps Up

My heart leaps up when I behold
A rainbow in the sky:
So was it when my life began;
So is it now I am a man;
So be it when I shall grow old,
Or let me die!
The Child is father of the Man;
And I could wish my days to be
Bound each to each by natural piety.

Wordsworth's piety was not so much religious as it was his responsiveness to the miracle of ordinary things.

Tennyson wrote of more palpable events. His The Charge of the Light Brigade memorializes a battle in the Crimean War and is a favorite of our children. We enjoy it for its rolling, powerful language.

Half a league, half a league,
Half a league onward,
All in the valley of Death

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Rode the six hundred.
" Forward the Light Brigade!
Charge for the guns! " he said.
Into the valley of Death
Rode the six hundred.

When can their glory fade?
O the wild charge they made!
All the world wondered.
Honor the charge they made!
Honor the Light Brigade'
Noble six hundred.

Thomas Hardy, the well-known novelist and poet, crafted some of his most inspired writing after and about the death of his wife.⁹⁷ Hardy's The Voice evokes emotion and creates enchanting images.

The Voice

Woman much missed, how you call to me, call to me,
Saying that now you are not as you were
When you had changed from the one who was all to me,
But as at first, when our day was fair.

Can it be you that I hear? Let me view you, then,
Standing as when I drew near to the town
Where you would wait for me: yes, as I knew you then,
Even to the original air-blue gown!

Or is it only the breeze, in its listlessness
Travelling across the wet mead to me here,
You being ever dissolved to wan wistlessness,
Heard no more again far or near?

Thus I; faltering forward
Leaves around me falling,
Wind oozing thin through the thorn from norward,
And the woman calling.

⁹⁷The theme of much of Hardy's work was the struggle of man against the forces seemingly beyond his control that create so much of life's difficulty. The theme of this article is to encourage writers to assert their own control over their environment.

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Finally, let us briefly visit Ulysses, the great Greek adventurer of Homer's Iliad and Odyssey. After the great Trojan wars, Ulysses went home, but couldn't stay. He was restless and felt a need to continue his pursuit of virtue and knowledge. He led his aged warriors on further exploration to the West and colonized new settlements. Many writers have adopted this classic hero in their writing. Tennyson used the myth to portray his own need to go forward and brave the struggle of life. Here are just a few lines from his Ulysses:

I am part of all that I have met;
Yet all experience is an arch wherethrough
Gleams that untraveled world whose margin fades
Forever and forever when I move,
How dull it is to pause, to make an end,
To rust unburnished, not to shine in use!

...

And this gray spirit yearning in desire
To follow knowledge like a sinking star
Beyond the utmost bound of human thought.

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RECOMMENDED BOOKS

- Aldisert, Ruggero J. Logic for Lawyers: A Guide to Clear Legal Thinking, Clark Boardman Company Ltd., 1989 (serious resource for logical analysis).
- Pratt, Diana V. Legal Writing: A Systematic Approach, West Publishing Company, 1989.
- Ramsfield, Jill J. and Ray, Mary Barnard. Legal Writing: Getting It Right and Getting It Written, West Publishing Company, 1987 (unusually helpful, handy encyclopedic reference for legal writers).
- Rombauer, Majorie Dick, and Squire, Lynn B. Legal Writing in a Nutshell, West Publishing Company, 1982 (five-star resource).
- Smith, Robert B. The Literate Lawyer, Butterworth Legal Publishers, 1986 (scholarly, readable addition to the serious writer's bookshelf).
- Strunk, William Jr. and White, E.B. The Elements of Style, 3rd ed. MacMillan Publishing Company, Inc., 1979 (classic).
- Texas Law Review Manual on Style, 5th ed. Texas Law Review Association, 1987 (style books are mandatory; this is a good one).
- Weihofen, Henry. Legal Writing Style, 2nd ed. West Publishing Company, 1980 (wonderful).
- Williams, Joseph M. Style, 2nd ed. Scott, Foresman and Company, 1985 (strong on nuts and bolts, pleasingly written and offers clear examples).
- Wydick, Richard. Plain English for Lawyers, 2nd ed. Carolina Academic Press, 1985 (classic, get it).
- Zinsser, William. On Writing Well, 2nd ed. Harper and Row, 1980 (Zinsser is a writer's writer).
- Block, Gertrude. Effective Legal Writing: A Style Book for Law Students and Lawyers, 2nd ed. The Foundation Press, Inc., 1983.
- Charrow, Veda R. and Erhardt, Mary A. Clear and Effective Legal Writing, Little Brown & Company, 1986.
- Emery, Clyde. A Streamlined Briefing Technique, American Bar Association, 1973 (one of a kind on system for research and analysis).
- Goldfarb, Ronald A. and Raymond, James C. Clear Understanding: A Guide to Legal Writing, Random House, 1982.
- Good, C. Edward. Mightier Than the Sword, Blue Jeans Press, 1989.
- Bates, Jefferson D. Writing With Precision, Acropolis Books, Ltd., 1980.