

# How to Dominate Your Reader— and Make Stewie Griffin Proud

By Joseph Kimble

*This is a talk I gave to law students at the National Conference of Law Reviews, for the annual Scribes dinner. The dinner honors the winner of the Scribes Law-Review Award, given to the year's best student-written note or comment.*

**W**hen it comes to legal writing, most lawyers seem to have a contrarian attitude. They flout accepted principles of good writing. They cling to habits and practices that have been criticized, not to say ridiculed, for centuries. And they continue to think this style is effective, impressive, perfectly comprehensible, and necessary for legal precision—contrary to what the rest of the world says and contrary to the strong evidence presented by reformers within our own profession.

But let's not daydream about reform. To help shield you from change, I'm offering some special tips for succeeding in the contrarian, backward-looking world of legal writing generally and law-review writing in particular. Unfortunately, your article will never win the Scribes Law-Review Award, but so what? You don't want to stand out or be different. So here's how to mark yourself as a traditional, establishment legal writer and editor—and no mere purveyor of simple, direct, uncluttered prose.

I've got 12 extra-special tips for staying the familiar course—and showing reformers what they can do with all their plain-language poppycock.

- #1. Try to have more than half of every page devoted to footnotes. More footnotes than text. After all, readers care about what you're saying, but they care more about whether you've cited and annotated every authority even remotely on point since the beginning of recorded history. And the digressions in footnotes serve nicely to break up the tedium of your line of thought. Legal readers expect to have two trains running. That's just how we do it. We're sophisticated about these things.
- #2. Of course, you must—without exception—footnote every sentence, even if you produce a long series of *Id.s* or even if the point is a matter of common knowledge. If you say—and by the way, I note this with pain—if you say, “In 2012, the San Francisco Giants won the World Series,” you must footnote it. And you should probably add in a parenthetical that the World Series is played for the North American championship of the game of baseball.
- #3. A related secret. Practice the art of the midsentence footnote. The current rec-

ord is 9 footnotes in a 21-word sentence. Midsentence footnotes are a sign of how really meaty your sentence is. And the reader benefits because the constant looking up and down is good exercise for the eye muscles and even the neck.

- #4. Use as many prepositional phrases as possible. Readers appreciate this kind of wordiness. Too brisk a pace can be very tiring. So never write “the landlord's duty to maintain the common areas” when you can write “the duty *of* the landlord *with regard to* the maintenance *of* the so-called common areas.” You know, add some speed bumps—for the reader's own good.
- #5. Use *pursuant to* as often as possible. Some people say it reeks of legalese, but we know better. It adds little grace notes to your writing. We love the poetry, the musicality, of purSOOant TO. So forget about the common, pedestrian word *under*. Not *under Rule 10*, but *pursuant to the provisions of Rule 10*. And while you're at it, never use *before* or *after* when you can write *prior to* or *subsequent to*. We all know that Robert Frost made a rare misstep when he wrote, “But I have promises to keep/And miles to go before I sleep.”

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“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit <http://www.michbar.org/generalinfo/plainenglish/>.

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I'm offering some special tips for succeeding in the contrarian, backward-looking world of legal writing generally and law-review writing in particular.

It should have been: “And miles to go prior to my sleeping.” Same with “’Twas the night prior to Christmas.” In short, strive for inflated, high-flown, bookish language. Never mind what George Bernard Shaw said: “In literature the ambition of the novice is to acquire the literary language; the struggle of the adept is to get rid of it.” What does he know?

#6. Strive for an average sentence length of about 35 words. Anything less will not challenge your reader enough. Short sentences are for wimps. And you’ll open your writing to charges of being unsophisticated, dumbed down, babyish, base, dull, and drab. As your model, look to Tom Wolfe or Norman Mailer. Of course, they’re virtuosos, but we might be too. So practice concocting elaborate, intricate sentences like theirs. You can do it!

#7. Likewise, test your readers’ mental agility by saving the main verb—the main action—for late in the sentence. It creates a nice sense of dramatic anticipation about what’s happening. For example: “The employees, who had tried—no, attempted—for years to resolve their grievance through a series of meetings with company representatives and an arbitrator, finally SUED in federal court.” Wait a minute. A simple verb like *sued* isn’t good enough. Make it *brought suit*. Better yet: *instigated litigation*.

#8. Never start a sentence with *But*. We all know that “How-ev-er,” with a comma, is more rhythmic and stately. Pay no attention to how you talk or what good writers do. Lincoln slipped when he wrote, “But in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground.” We learned

from our high-school teachers that it’s incorrect to start a sentence with *And*, *But*, or *So*. We also learned that we should never split an infinitive, never end a sentence with a preposition, never use the first person, and never use a contraction. Heaven forbid that you should write “i-t-apostrophe-s.” We have standards to uphold, and superstitions to believe in.

#9. Never use a dash. The reason is simple: dashes are way too informal for the lofty enterprise of a law-review article. Besides, then you’ll never have to worry about the difference between a hyphen and a dash, or between an en-dash and an em-dash. The world would be a better place if we could just whack a few of those pesky punctuation marks.

#10. Create as many initialisms or acronyms as possible. The more, the merrier. Take a name like “The Society to Preserve the Blues.” For later references, don’t shorten it to “The Society” or “The Blues Society.” Make it “SPB.” Besides all the pages you’ll save, when you use “SPB” on page 3 and then again a few pages later, the reader will probably have to thumb back through to remember what it stands for—thus re-viewing your article (although in reverse). That’s quite a nice payoff to you for annoying the reader just a little.

#11. Pay no attention to navigational aids or to formatting. Readers are thrilled to be faced with long stretches of uninterrupted text, without any headings or subheadings to point the way. And do not stoop to using bullets or diagrams or graphics of any kind. That kind of namby-pamby stuff is for kids only. Also, make sure to use tight line spacing, narrow margins, and lots of all-caps and underlining. Stick with typewriter tools.

#12. Don’t try for anything humorous or light. Ignore Fred Rodell’s complaint—he was a Yale law professor—that “it seems to be a cardinal principle of law-review writing and editing that nothing may be said forcefully and nothing

## Last Month’s Contest

Last month, I invited readers to revise the following sentence from the old (before December 2007) Federal Rules of Civil Procedure. It’s from old Rule 35(b)(3).

The subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provision of any other rule.

I promised a copy of *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* to the first two readers who sent me an A revision. I said to “notice the slew of unnecessary prepositional phrases.” Unnecessary prepositional phrases are probably the most common cause of flab in legal and official writing. And what’s the most common indicator of this possible flab? The word *of*.

In the sentence above, there are six or seven prepositional phrases, depending on whether you count the multiword preposition *in accordance with* as one or two. And there are five *ofs*. Awful.

The new, restyled rule is Rule 35(b)(6). It has one prepositional phrase:

This subdivision does not preclude obtaining an examiner’s report or deposing an examiner under other rules.

The first winner is Jordan Reilly, of Craig, Smith & Cutler in Eldora, Iowa. His entry:

The subdivision does not preclude discovering an examiner’s report or taking the examiner’s deposition under any other rule.

The second winner is Linus Banghart-Linn, an assistant attorney general in Lansing.

The subdivision does not preclude deposing an examiner or discovering the examiner’s report under any other rule.

Obviously, both these entries are very close to the new rule. Well done.

A number of entries converted *does not preclude* to positive form. I admit that it was hard to determine whether, in context, positive form would work as well or better. But even apart from that, I thought the two winning entries stood out.

—JK

may be said amusingly.” It’s just too risky to try for anything fresh or expressive, or to use an occasional allusion or metaphor. Readers are more comfortable with clichés, such as: “Legal writing is like the weather: everybody complains about it, but nobody does anything about it.” And remember: when you use an expression like this, you should try hard to track down the source. If all else fails, attribute it to Mark Twain. He’s always a good bet.

If you do all these things, you’ll be well on your way to accomplishing several notable goals:

- You’ll confound all the writing experts—you’ll prove them so wrong about good writing. You did it your way, the old way.
- As I suggested earlier, you’ll put yourself squarely within the venerable [cough] tradition of scholarly legal writing. You’ll be sharing the attitudes and practices of many—I daresay most—legal writers.
- You’ll mark yourself as erudite, learned, soon to be a juris doctor. You’ve earned the right to show off a little.
- You’ll give your prose style a weight and complexity that matches your deep thinking. Here again, all the great intellects and stylists, including Einstein, who say that even complex ideas can be expressed clearly—they just can’t be right. Complex ideas require dense prose. Anyway, it’s too much trouble to be clear. Takes too much practice and skill and reading.
- You’ll counter the growing trend toward plain legal writing—and prove that all the myths about plain language weren’t really myths after all. It just doesn’t work. Legalese is tried and true. It never causes trouble.
- Finally, you’ll force your reader to spend extra time reading your article, extra time absorbing your thoughts. In the words of the Beatles—my generation—you know that can’t be bad.

You’ll achieve reader domination. Then you can echo Stewie Griffin—your generation, gotta love him—“Victory is mine!” Of course, Stewie is sometimes a little delusional, isn’t he?

Further law prof sayeth naught. ■



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