Tips for Better Writing in Law Reviews (and Other Journals)

By Joseph Kimble

I originally prepared these tips with help from my colleagues in the Research & Writing Department at Thomas Cooley Law School. Each year, we read dozens of student notes submitted for the Scribes Law-Review Award. And each year, we see distractions and deficiencies. So I offer these tips as a public service—and for self-protection.

Structural and Analytical Tips

• Write a compelling introduction, one that's sure to grab the reader. Avoid platitudes ("torture is inconsistent with American values") and banal generalities ("the limits of *Roe v Wade* are still being tested in federal courts"). State your claim, your main thesis, in a forceful way. Or use a concrete example to illustrate the issue, and then state your claim. For good examples, see *Academic Legal Writing*, by Eugene Volokh, and *Scholarly Writing for Law Students*, by Elizabeth Fajans and Mary Falk.

• Avoid the sleep-inducing, but ubiquitous, front-end description of what you're going to cover in each part. Your headings should provide the guidance that readers need.

• Back up your analysis with accepted jurisprudence, current law, or some other accepted theory from another discipline. But be selective and pick the most important authorities; do not feel the need to survey the entire history of law on the subject. Save that for your book.

• Be painstakingly accurate in representing what the authorities say; otherwise, your reader will distrust everything else in your article.

• Raise and address counterarguments as you go, in their logical places. Don't save them all for a separate part at the end.

• Generally avoid long paragraphs—those longer than six sentences (and not six long ones). Try to average three or four sentences. Another guideline: average no more than 150 words.

• Use topic sentences. Make sure that each one connects with the point you were just making and summarizes the point you're about to make in the new paragraph.

Footnoting and Formatting Tips

• Minimize talking (substantive) footnotes. Save footnotes for citations and, when appropriate, short parentheticals. Here's a good test: if you think the material is worthy of a footnote, try to weave it into the text; if you can't, then it probably won't be very useful to your reader as a footnote either. Remember: a page with a longer footnote section than text is a bad sign. Page after page in that mode is a nightmare.

• Put almost all footnote numbers at the end of the textual sentences, not midsentence.

• Again, for most propositions, cite just one or two authorities (and possibly a contrary authority). Occasionally, you might cite more to show the sheer weight of authority on an important or controversial point.

• Don't feel obligated to footnote every sentence. A series of *Id*.s is often overkill. Use some judgment and give the reader some credit. If, for example, you're summarizing a court's reasoning in a few sentences within the same paragraph and the court's reasoning appears on consecutive pages, one citation should do. An adroit writer who cares about avoiding footnote clutter can signal the consolidation to the reader ("the court distinguished *Jones* in two ways").

• Guide the reader with plenty of informative headings and subheadings. Not informative: "The Majority View." Informative: "The Majority View: *Shall* in Rule 56 Does Not Mean *Must*."

• Don't use ALL CAPITALS or underlining for headings. Use gradations of **boldface**, or **boldface** combined with ***italicized boldface***.

• Use graphic devices such as bullet dots, numbered lists, charts, and diagrams to make your points easy to grasp.

Stylistic Tips

• Above all, make the text lively and readable. Avoid clichés like the plague. Try in places for fresh, evocative prose.

• Write in a style that's conversational but polished. Two good models: *The Green Bag* and *The Scribes Journal of Legal Writing*.

• Write your article so that any literate person can understand it. Too often, authors write law-review articles while thinking only about their academic colleagues. But the more useful and effective articles are

those that are easily understood by academics, judges, lawyers, students, and laypeople alike.

- Vary sentence length, but generally write crisp short and medium-length sentences; aim for an average sentence length of 20 to 25 words.

- Use connectors to create flow in your document. And allow yourself to start sentences with *And*, *But*, and *So*; in fact, prefer those conjunctions to their equivalents.

- Minimize long block quotations. And weave quotes deftly into your substantive point. Avoid leading into quotations with unhelpful set phrases like *The court stated* and *The statute provides in pertinent part*.

- Avoid string citations, or use parentheticals telling the reader why you have cited multiple sources.

- Don't turn verbs into nouns (so-called nouners). Use *consider*, not *give consideration to*; *concluded*, not *came to the conclusion*. Examples like these abound.

- Root out unnecessary prepositional phrases. Not *the duty of the landlord*, but *the landlord's duty*; not *an order of the court*, but *a court order*.

- Avoid a slew of initialisms. It's ridiculous to convert *the Martin Luther King Scholarships* to *MLKS*. After the first full mention, find a convenient shorthand: *King Scholarships*. If an initialism is already in the common vocabulary, fine; use it. There's no need to convert *IRS* to *the Service*, or to write *The Internal Revenue Service (IRS)* on the first mention, as if your reader needed to be told what the short form will be.

- Hyphenate phrasal (compound) adjectives like *small-business owner* and *civil-rights law*.

- Embrace the dash. Shun the slash.

- Allow yourself to use *I* if that comes naturally in the sentence.

- Avoid inflated diction like *prior to* and *during the course of*.

- Avoid lawyerisms like *pursuant to* and *inter alia*.

- Don't use a longer, unfamiliar word when a shorter, more familiar one will do. Know the plain equivalents of inflated words and phrases, and prefer them in almost all instances. Use plain English!

- After you have prepared your first draft, cut it by at least 10%—ideally, more.

- Check and then double-check spelling and punctuation.

Reference and Reading Tips

- Build a reference library. At the least, you should have and habitually consult these books by Bryan Garner: *Garner's Modern American Usage*, *Garner's Dictionary of Legal Usage*, and *The Redbook*.

- Commit to a serious reading program, if you haven't already. Among the possible starting points: Richard Wydick, *Plain English for Lawyers*; Bryan Garner, *The Elements of Legal Style*; Joseph Kimble, *Lifting the Fog of Legalese* (with additional recommended books in Appendix 2); Joseph Williams & Gregory Colomb, *Style: Lessons in Clarity and Grace*; John Trimble, *Writing with Style*.

- In everything you read, be a keen observer. Notice what good writers do. Jot down words, phrases, techniques. Make it a lifelong ambition to learn more about writing and to keep improving. ∎

Joseph Kimble has taught legal writing for 30 years at Thomas Cooley Law School. He is the author of Lifting the Fog of Legalese: Essays on Plain Language *and* Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law. *He is also the editor in chief of* The Scribes Journal of Legal Writing, *the past president of the international organization Clarity, a founding director of the Center for Plain Language, and the drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence.*