

Strategies to Improve Your Writing

A Few Reminders

By Kara Zech Thelen

“Welcome to the most important class in law school!” That’s the first thing I tell my students each term. After all, writing (and speaking) is what lawyers do. A lawyer doesn’t get through most days without having to write something—a professional e-mail, a client letter, a memo, a motion, a brief. Writing is our craft. Like the mason who has to skillfully use tools—bricks, mortar, a trowel, a level—to craft a solid foundation to support a building, a lawyer must skillfully use writing tools—familiar nouns, active verbs, transitions, punctuation marks—to create solid, well-connected sentences that support the arguments in legal briefs and memos.

But as I look back at the class, I see faces filled with dread and fear, or at least apprehension. So I’ve come up with three things to help address what I’ve found is a growing epidemic: a lack of confidence in writing.

1. Writing is hard, but tools can help

A simple truth: writing is hard. And not just for students, but for all of us. As renowned sportswriter Red Smith said,

“There’s nothing to writing. All you do is sit down at a typewriter and open a vein.”¹

What accounts for this difficulty? You probably know the reasons.

First, writing is an inherently self-conscious process. As legal writers, we put our thoughts on a page for the reader—a colleague, a boss, a client, a judge—to examine, critique, or decide on. So practice a fix: be open to having your writing critiqued. It’s not about you; it’s about the writing.

Second, writing is hard because we can’t use inflection or gestures to convey our meaning. But good writing, like good speaking, demands inflection. So we have to use our writing tools: word choice, word placement, grammar, and punctuation. Dashes are wonderful emphaziers. Not only can our tools prevent our words from languishing on the page, but they help us write persuasively—the goal of brief-writing in particular.

One tool is word choice. We can strategically choose our words. When we write a court brief, we can’t manipulate or massage the facts, of course. But we can pick our words strategically to describe the facts in a way that strengthens our client’s case. For example, in a sex-harassment case against a supervisor who e-mailed sexually explicit material to his employee, we can describe those e-mails as “pornographic” (employee’s version) or as containing “adult content” (employer’s version). We change the

emphasis simply by deciding which adjective to use.

Another tool is word and sentence placement. Where we place words in a sentence, and a sentence in a paragraph, gives our writing emphasis. We want our sentences to go out with a bang. We finish with the new, more important material, while we put old, connecting information at the beginning of our sentences to lead the reader along from one sentence to the next. As for paragraphs, the points of emphasis are at the beginning and end. So topic sentences occupy prime real estate in any document. Invest in them. Highlight each topic sentence in the last document you’ve written, and then ask: *Do the topic sentences describe the main point of each paragraph?* And: *If I read each of my topic sentences in order, does a clear outline of my document emerge?* Yeses to both are critical.

Still another tool is voice. We can strategically pick our voice—active vs. passive—to give our writing emphasis. Writing in the active voice—putting the nouns, the doers of the action, before the verb—is essential to keeping our audience engaged. *I broke the window* is active; *The window was broken by me* is passive. Active writing tells the reader who is doing what. It moves. And readers love it when your writing is going somewhere. But when we want to de-emphasize the doer, we can strategically switch to the passive voice. Which sentence

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better supports your defense of your doctor-client in a medical-malpractice lawsuit? *The doctor left the scalpel in the patient.* Or, *The scalpel was left in the patient.* Of course, this technique can be overdone or even seem contrived. Use judgment.

Finally and most importantly, clarity. How do we make our sentences clear? For starters, limit them to one main thought per sentence.² Break long sentences into two or three sentences if possible. Sentences are like sponges—they can only hold so much before leaking and making a sloppy mess. Cramming too much information into a single sentence risks setting the reader adrift, with no choice but to circle back through the text to decipher facts, an argument, or a point. So we've got to keep the reader engaged with clear, tidy sentences that are strung together in a logical order to make a coherent whole. The more clear our writing, the more open a judge will be to our argument's credibility.³

2. Be natural

"That's it! Write that!," I say after I have a student explain what she is trying to say in a brief with words that are hopelessly tangled. Relief washes over her, and she gets back to the business of being herself when she writes—just what we're after.

When we write about the law, we tend to inflate our words and clutter our sentences. We think we should use words like *prior to* and *in the event that*. We think we sound smarter, more capable. But by focusing on our insecure selves, we forget about the more important person in the relationship: the reader. And why wouldn't we? What we read to learn the law, opinions collected in casebooks, is littered with legalese, passive voice, and wordy constructions.⁴ That first impression of legal writing is often, and unfortunately, a lasting one for many of us.

But the opposite is true: plain language smartens up our writing.⁵ Writing clearly and simply for the reader isn't easy. Again, it's hard to make every word do useful work in sentences that are strung together in logical order, keeping your reader along for the journey. But keeping your reader engaged is paramount when your reader is a judge deciding on your client's business, family, finances, or freedom.

Compare these two passages describing a familiar but nonlegal event:

Passage 1:

Mary was responsible for the creation of a delicious meal. Both my spouse and myself enjoyed said dinner. As such, I made an inquiry with regard to how she made it. Thus, subsequent to the meal, I utilized a cookbook lent to me by Mary in order to make a determination of the ingredients of aforementioned meal. Thereafter, I made a shopping list (hereinafter, "List"), wherein the requisite ingredients were included. The following week, I requested that my spouse transport himself to a nearby grocery store, wherein a purchase of items delineated on List could be made so that we could replicate the meal.

Writing clearly and simply for the reader isn't easy.

Passage 2:

Mary cooked a delicious dinner for us. Both my husband and I loved it, so I asked Mary how she made it. After dinner, Mary lent me a cookbook with the recipe, which I used to make a shopping list. The next week, I wanted to make the dinner, so I asked my husband to go grocery shopping for the items on the list.

Students laugh at the first passage and say it sounds ridiculous. But they sheepishly admit that when they write something about the law, their writing sounds more like that passage.

Well, that *is* ridiculous. There's no good reason to embellish our writing when we're writing about the law, as opposed to other subjects. Justice Scalia says there's no such thing as good legal writing; good writing is good writing no matter the subject.⁶ Any topic, no matter how legal or complicated, can be reduced to a clear and interesting piece if the writer is committed to using plain language.⁷

Since students clamor for bright-line tests, they find this one particularly useful—you might too: "The key is to avoid words that would cause people to look at you funny if you used them at a party. Pretend that you're telling your story to some friends in your living room; that's how you should tell it to the court."⁸ Now we've got a bull's-eye. And the hard work of writing gets a bit easier.

3. Find your writer models—the writing makeover

Before we can learn to write well, we need to understand what makes good writing. But good writing is rarely found in the casebook opinions my students have been reading for the last several semesters. So they have to go hunting for good models. We all do.

Here's an in-class exercise that we do. Find a piece of good writing. It can be any nonfiction piece—a brief, a book, a magazine or newspaper article, an essay, a blog, an e-mail even. Then write down four reasons why you believe the writing is good. (Usually students' reasons include that the writing is (1) vivid, (2) straight to the point, (3) easy to read, and (4) interesting.)

Now look at a page of your own writing. Grab a pen or highlighter and comb the text to find the four attributes. See how many are present in your piece. Then begin the critical editing process, aiming for the target you've pinpointed by asking: *Is it clear? Am I using active voice and familiar nouns? Is it simple? Do I include one thought per sentence? Does it logically flow from one sentence to the next? Have I included topic sentences and transition words? Does every word do useful work? Is my interest in my topic obvious? Is it something that I'd like to read?* Simply put, create a writing checklist.

And edit some more. Then find a colleague, friend, spouse, or significant other who is willing to read your work. Give that person a clean copy of your original piece and your edited piece. See if that person can identify the one that's undergone your writing makeover.

This exercise helps improve writing in several ways. First, it prompts us to go beyond the law books to hunt for good writers to follow. To learn to be good at something,

we have to start by imitating someone who does it well until we develop our own skill and style.⁹ Nearly every famous artist, musician, and athlete started his or her work by imitating another's. Finding someone who writes well and reading that person's work often is essential. Second, it gives us a clear writing goal by requiring us to identify what makes good writing. Third, it provides a tangible assessment guide; we identify attributes from a piece of good writing to measure our own work by. Last, it shows the value of editing and re-editing—a habit any good writer must settle into to transform his or her writing to its best form.

The upshot is this: after I teach these three lessons, students are more relaxed about writing. They realize that they're not alone: writing is hard for everyone. But there's hope—because writing tools make the job easier. Use them carefully. Find your

writer models. Remain open to constructive feedback. Be yourself. Edit repeatedly. Practice writing for the rest of your life. ■



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ENDNOTES

1. Schmuhl & Smith, *Making Words Dance: Reflections on Red Smith, Journalism, and Writing* (Andrews McMeel Publishing, 2010).
2. Zinsser, *On Writing Well* (HarperCollins, 2006), pp 71, 262–263.
3. Scalia & Garner, *Making Your Case: The Art of Persuading Judges* (Thompson/West, 2008), pp 23–24.
4. Garner, *The bad writing in casebooks*, 41 *Student Law* 16–17 (November 2012).
5. Cooney, *A legal-writing carol*, 91 *Mich B J* 36 (December 2012), available at <<http://www.michbar.org/journal/pdf/pdf4article1949.pdf>> (accessed September 17, 2013); Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press, 2006), pp 9, 55.
6. Scalia, Acceptance Speech for the Lifetime Achievement Award at the Scribes Annual Luncheon (August 9, 2008), available at <<http://www.lawprose.org/interviews/Justice-Scalia.php>> (accessed September 17, 2013).
7. Zinsser, n 2 *supra*.
8. Scalia & Garner, n 3 *supra* at 113.
9. Zinsser, *The Writer Who Stayed* (Paul Dry Books, 2012), p 45.