

**The Endangered Art of Writing:
Tools and Suggestions for Attorneys and Related Professionals**

by Dr. John F. Sase

Gerard J. Senick, Chief Editor
Julie G. Sase, Copyeditor
William A. Gross, Researcher

“*[E]ven passable writing involves rewriting again and again and again.*”

--Deirdre N. McCloskey, *Economical Writing* (Waveland Press, 2nd ed., 2000)

Prelude

In this month’s column, we will explore the endangered art of writing in the fields of Law, Economics, and related professions. This art includes organization, sentence structure, spelling, punctuation, and grammar, among other elements. In my (Dr. Sase) work as a consultant, attorneys have told me about the problems that arise when they hire law-school graduates who cannot write Complaints, Legal Briefs, interrogatory questions, and other standard documents of the profession. In addition, the problem of diminished literacy in the workplace has spilled over to clerks and other law-office staff. Who should take the blame for this problem? As an instructor of Economics who grades the written work of both undergrad and graduate students, I have witnessed the growth of this problem in recent years. As educators, we continue to assess written communication skills. Students must write effectively to demonstrate their ability to communicate and to think critically. Unfortunately, papers with excellent content, grammar, and style, often raise flags of suspicion as students may have been purchased them from term-paper mills on the Internet. These flags run up the pole because the general quality in student papers is typically less than excellent.

We can trace the roots of incompetent student writing to our public-school systems. A few decades ago, they abandoned the diagramming of sentences in English classes favoring more creative teaching approaches. Since then, children have progressively spent more time in front of the television and surfing the Internet. More recently, colleagues and I have been teaching the “products” of the No Child Left Behind Act of 2001. This Act reflects the belief that establishing high standards and measurable goals will improve student outcomes. However, the enforcement of the Act has led to degeneration. Now, teachers teach to standardized exams like the Michigan Educational Assessment Program (MEAP). As the ability to pass standardized exams increases, critical thinking and writing proficiency decreases. As a result, a segment of law-school applicants can perform well on the graded, objective portions of the Law School Admission Test (LSAT). However, testing companies do not grade the thirty-five-minute writing sample administered at the end of the LSAT before sending the piece to selected law schools. Consequently, senior attorneys continue to grow more aware of the problem college instructors face three or more years before the hiring partners or proprietors of law firms.

Students writing for a law review while in school bring the best of them to the forefront. However, what about the others? Established attorneys should not have to take on the task of

teaching the rudiments of professional writing to their staff. However, given the investment made to recruit and hire new talent, open dialogue with an appropriate takeaway may benefit entire offices. We present this submission in the spirit of professional development within the larger legal community, including forensic experts. Please feel free to copy and share it in your office and classroom.

Introduction

Some attorneys and economists do not like criticism about their writing. However, many professionals never rewrite their documents. This practice leads to problems.

In contrast, professionals who write will grow and develop through negative as well as positive critiques. In addition, taking the opportunity to revise their works multiple times before submitting them will help to ensure the creation of more effective documents.

Throughout the legal community, writing stands as the trade of professionals. However, poor writing causes more documents to fail to achieve their purpose than hasty research or sloppy statistics. We should remember that ninety-five percent of cases settle before going to trial. Much of the credit to attorney success goes to well-written, persuasive documents submitted to the court and opposing counsel.

The Ground Rules

Almost any young attorney or staffer can develop the skill to write well, or at least better. Often, traditional rules of writing can help. However, the continuation of poor writing habits can injure emerging practitioners in the pursuit of perfecting their skills.

The first objective in writing any document is to Keep It Short and Simple. With practice, professionals in any field can trim their initial drafts by more than one-fourth. Editing means that the writer may need to start with fourteen or fifteen pages in order to draft a legal brief of ten pages.

The writing process resembles the work of baking, carving, and other crafts--focus, ability, and discipline must occur to achieve the desired quality.

As with music, painting, or any other art, competent writers naturally reflect their spirit and mood within their work. This quality remains an important point to remember when authoring persuasive legal documents. Therefore, writing that sells an idea needs to possess the most excellent clarity. Influential writers reach a level of clarification such that their readers comprehend what the authors intend. These readers will do so in a way that they cannot mistake the intent of the writer. Remember: for all types of documents, readers are sovereign.

Our Strange Language

Apart from a handful of Latin terms, the legal community does not communicate in the language of ancient Rome. The Modern English that we use currently has evolved from a diversity of languages. As a result, established English grammar rules tend to be factual rather than logical, an issue that can baffle many professionals who use English as their second language. We might tell them that our rules for speaking and writing differ from one another. However, the rules

come from observation in both cases. Once accustomed to the language, one finds it easier to spot poor writing and determine where the work has strayed. If writers read the work of another, they will find that they can sense it as well. Experienced attorneys can articulate why a poorly written document sounds awkward and unprofessional.

Attorneys, experts, and others find and define quality standards for style through the evolution of cumulative works by authors considered excellent writers in their fields. We do not set our style standards from rule books. Such books rarely keep up as our language evolves. The absence of books that reflect current usage can lead to a noticeable lack of clarity and grace that leaves readers frustrated.

All professionals working in the field of Law need to remember that basic rules guide even the most technical writers. A well-written document should meet the intended goal while stirring some passion for persuasion within the author. As writers, we either must admire or admonish what we produce. In other words, “We have got to love it or leave it.” Otherwise, what reactions can we expect from a readership of judges and opposing counselors?

Tools, Techniques, and Fluency

Before drafting any document for court, we must gather the tools that we need for this craft. These tools include a general outline, notes for revision, paper for scratching, and a word file that is open on the computer screen. Some in the legal arena prefer to write an initial draft using a pen and a pad that they can carry around. When writers commence their editing, they need a good dictionary, such as the *Merriam-Webster Dictionary* (Merriam-Webster, Inc. 2019), and a thorough thesaurus like *Roget’s International Thesaurus*, 8th Edition, edited by Barbara Ann Kipfer, Ph.D., (Collins Reference, 2019). However, words are the primary tools of the work.

The principal challenge attorneys and others face after reading, thinking, and strategizing come in writing. If we over-intellectualize the topic, fluidity may elude us before we even set pen to paper. Therefore, we need to ask, “When should we start writing?” Writing experts agree that it is better to begin earlier rather than later. Nevertheless, many writers feel dread when faced with the prospect of sitting down at the keyboard. As a result, the first draft is the hardest one.

Research is writing, and writing is research; they are inseparable. Neither needs to be linear. As one is researching, a well-tested strategy for overcoming obstacles is writing snippets on Post-It Notes and jot down essential ideas on index cards. Writers can arrange notes and cards on a wall or bulletin board in the way that filmmakers create illustrated storyboards. The linearity of a document comes from assembling the mosaic of small pieces—the free-form jigsaw puzzle that evolves into a finished manuscript.

Now, we begin to write. If we knew how thought flows within the creative process, we could program computers to do our writing. However, we do not (perhaps for the better). Though we seldom know for sure where human creativity comes from, it continues to survive. The act of writing forces the questions that we should ask about the facts relating to our document. Some writers claim that their guiding torch comes through the question, “So what?” Resultantly, our writing will improve the more that we ask and answer this question.

Writers achieve flow—literary fluency—through work, sweat, and grit. The path to fluency includes Invention, Arrangement, and Style. Of these three, Style remains the easiest to learn yet

the hardest to perfect. However, for every one of us, Style begins with fluency--getting our thoughts down on paper or into a computer. Style ends with our last rewrite, but when should we stop our revisions? After eliminating all of the muck from our writing, our edit should reach a climax when we get an acceptable level of clarity and satisfaction.

Helpful Hints for Revision

Attorneys and their Experts need to remember that they must write to an implied audience of judges, jurors, and other attorneys. If one can identify a specific person, then so much the better. Furthermore, this focus must increase and tighten during revision. As tedious as it may seem, style flows from the act of correction, a process that any writer can learn. Essentially, this modification involves as many rewrites as possible over as long of a time as feasible. This caveat may explain why college or law-school papers written with Red Bull's help the night before due usually lack merit. With last-minute documents, students claim that they have no time for complete, multiple rewrites. However, reaching and persuading the implied reader requires a focused clarity that evolves during revision. Therefore, as you rewrite, envision your critical readers and look them square in the eyes.

In large firms, copyeditors may spread out the work among many people. In a small practice, it may fall on a single person. Regarding the revision techniques relevant to those in the field of law and related professions, authors Amy Einsohn and Marilyn Schwartz have prepared *The Copyeditor's Handbook: A Guide for Book Publishing and Corporate Communications* (University of California Press, 4th ed., Revised, Updated, and Expanded, 2019). Einsohn presents a practical manual for revising professional papers to all who wish to further their knowledge and skills. They explain the function of a copyeditor, what to look for in editing drafts, and how to develop sound editorial judgment. For example, they discuss the levels of copyediting, including the quality of the writing by the author, the intended audience, and the budget available. Also, I have found that *Grammarly* (Grammarly.com) serves me well as a useful and cost-effective tool for picking the “low-hanging fruit” during the first of seven edits.

Keep It Focused, Clear, and Interesting

Specific reports, such as Interrogatory Questions, demand a more rigid boilerplate structure in order to control cost. In writing all other documents, it remains vital to maintain reader interest and spare your audience the duller products of your brain. Furthermore, a restatement of well-known facts, familiar passages, and extensive, longwinded introductions and conclusions bore readers. Get to your point and successfully answer the question, “So what?”

As in teaching or acting, writing is a performance. Though some attorneys may rely upon staff members to prepare a document, it is critical to keep to the same author's voice—that of you, the attorney or forensic scientist—and maintain the integrity of self as the writer. This practice determines the tone and much of the clarity of your document.

In any written work, each paragraph should make a point. Most professional documents consist of an introduction, a development, and a summary/conclusion. A writer builds each section by assembling paragraphs that are not filler. A paragraph should discuss one topic that contains a single point. Often, a short paragraph that makes no point causes the reader to leap ahead.

However, long paragraphs can cause as much trouble. Remember the old punch-line, “The best way to eat an elephant is one bite at a time.”

A Few Words on Presentation

If one picture, graph, or table is worth a thousand words, attorneys and experts should make them readable. The use of these kinds of word substitutes remains a part of writing. Therefore, the same rules apply. In using substitutes, writers need to keep their implied readers in mind, present documents with clarity and brevity, and use such devices only as necessary.

One can find many excellent books on the subject of the presentation. These include *Presentation Zen: Simple Ideas on Presentation Design and Delivery* (Voices That Matter) 3rd Edition by Garr Reynolds (New Riders, 2019), *Slide:ology: The Art and Science of Creating Great Presentations* by Nancy Duarte (O’Reilly Media, 2008), and *Beyond Bullet Points: Using PowerPoint to tell a compelling story that gets results* 4th Edition by Cliff Atkinson (Microsoft Press, 2018). These authors point to the art of simplicity that allows readers to process and store most of the information through their doors of perception. Though the foyer is large, the doorway is small. Only a limited amount of information can pass successfully through the short-term memory process and onward to long-term retention.

In past centuries, authors have used many footnotes that consume more than half a page. Today, word-processing programs lessen the main problem inherent in footnotes by including hyperlinks. With the development of links, multi-page footnotes have fallen into obsolescence. However, if a writer must use notes, s/he should subordinate and place the notes at the end of the document. In most cases, notes break the flow of a piece by adding material that does not fit or belong in the main body of the text. If used in place of a hyperlink, authors should detail their notes to serve as guides to outside sources and nothing more.

Coherency and Rhythm

All writers need to make their words cohere. Well-written documents should develop much like spider webs. Even though webs are fragile and lovely, a spider weaves them to capture its food. Like web lines, a writer must spin every sentence to link to the preceding ones. The entire structure of the piece must hang together. The final statement that closes a paragraph should emphasize the writer's point by turning around the thought. Coherent writing helps the reader to grasp what the writer intends.

Due to the influence of advertisements, popular songs, and electronic media, sentence fragments form most Texting and Twitter messages. Standard, fluent documents demand complete sentences—subject, verb, and object—not chips.

In the war against monotony, writers continue to debate the use of elegant variation. Pedantically repeating a limited vocabulary tends to bore readers. Through the use of synonyms, "eloquent variation" solves this problem. However, in rarified legal, economic, and other scientific terms, variation may confuse the reader. Be careful. Too much eloquent variation will impair the understanding of your intended meaning.

Reading Aloud

Before the invention of the radio and television, family and friends would assemble at homes to whittle, relax, or sew while taking turns reading aloud books to the gathering. The written word existed to hear it. Like music and poetry, accomplished writing has rhythm. By reading documents out loud to one another, the writers can listen to the rhythmic beat. Does it sound choppy? Is there monotony? Alternating a declarative sentence with others containing introductory phrases solves many problems through variation while allowing the rhythm to form.

When we listen to our documents read aloud, we can detect more than awkward rhythm. We expect rough drafts to contain a few inappropriate uses of eloquent variation, nonsensical or fragmented sentences, monotonous sections, and verbal stumbling blocks that will trip the reader's mind. In the case of stumbling blocks, parallel construction of two or more phrases can be rewarding, such as in the sentence “Maintaining clarity while voiding monotony by varying verb form will leave readers satisfied.”

Punctuation can cause a kerfluffle because rules develop and change over time. Traditionally, the rules reflect old guidelines that typesetters used to maintain consistency. For instance, after a comma or semicolon, a writer should put one space. However, the spaces may vary with one or two added, depending on usage after a colon. Punctuation goes within quotation marks but outside of parentheses. We defer to the *Chicago Manual of Style* (University of Chicago Press Staff, 17th ed., 2017).

Fixing What Is Broken

Instead of lulling readers to sleep through continuous use of passive verbs, active verbs benefit persuasive legal and economic writing. Less-experienced writers compose with flurries of adjectives and adverbs, a practice that leads to time-costly rewrites because superfluous words get scratched out first. However, revision leaves the remaining emphasis on the nouns and the verbs. With nouns, the primary task requires checking pronoun references for clarity. As for verbs, many writers overuse forms of the passive verb "to be: am, are, is." A writer should think of these words as one would think of an equal sign in math. If A equals B, then A is B. Likewise, if both A and B equal C, then A and B are C. Such cases represent the best usage of the verb “to be.”

Stale writers like to use words that proficient writers avoid. In Law, Economics, and related fields, professionals overuse: "via," "respectively," "thus," "hypothesize," "obviously," "overall," "basically," "factor," "concept," "data (pl.)," "process," "critique," "interesting," "individuals," and "finalize," and phrases like "in terms of," "for convenience," "the existence of," "time frame," "and/or," "intra/inter," and "the reason was due to." The list goes on and on.

In writing for forensic purposes, be concrete—concretize! Singular words trump plurals. A definite word proves more substantial than a general one because abstract terms morph into codes that readers must translate. Furthermore, it is easier to lift concrete words upward to abstraction than downward to concretion. When writing in Law, Economics, and other exacting fields, it helps to use plain words. Unfortunately, the practice of using fifty-cent words has taken its toll on American writing since the days of Mark Twain. The high-water mark came in the 1960s with the misuse of the older term “antidisestablishmentarianism,” a word that initially meant opposition to the withdrawal of state support or recognition from the Church of England.

It stands as a precise single word for a complex concept. Nevertheless, clear, direct English equals good communication.

As writers in the professions, we need to avoid the typographical smoke and mirrors of acronyms, the alphabet soup of the written word. For example, too many of them float around inside the beltway of Washington, D.C. However, when faced with one term intended for repetition, we can parenthesize the acronym after the term's first appearance. Using one or two different acronyms within a few pages may save the reader from the repetition of long-winded words. However, a stew of acronyms mixed and switching back and forth baffles the reader. As a result, most readers spend more time decoding than following the communication.

The Department of Redundancy Department

The formal English used in court amalgamates from Latin and many other languages within our global society. Therefore, we need to look carefully at the words that we include in our documents. Attorneys and other writers often forget the meaning of borrowed words and phrases. Forgetfulness often leads to redundancy. For example, the famous French word “soiree” means a party or function held in the evening. If we write “We will attend the soiree this evening,” are we not saying “We will attend the evening party this evening”? Let us avoid the redundancy of redundancy.

Whenever using a metaphor, we need to ask what is the “meta” “for”? Legalese, Economese, and other “dialects” notoriously bring back dead metaphors, a sort of soiree of zombies. Often-used dead metaphors include “to grasp a concept” and “to gather what you have understood.” Both use physical actions as metaphors for understanding ideas. However, most readers cannot visualize the action involved. Therefore, these dead metaphors tend to go unnoticed.

Major Rules of Revision

Some elements of writing remain fixed while others float. However, the significant rules that guide revision include: 1) Do not break the flow of a sentence with parenthetical material or an internal clause. 2) Emphasize the point of your sentence at the end. 3) Listen for sentences that sound monotonously long, abruptly short, or carry extra baggage at the end. With these rules in mind, we also need to avoid splitting infinitives and misplacing adverbs and other words that modify a verb or noun while switching around the order of words and phrases until the sentence sounds right.

Though mentioned in an earlier paragraph, one point is worth repeating: "Writing is meant to be heard." Reading aloud to another person in the office who has a critical ear makes reading a powerful editing tool. Writers have the chance to hear their words as close as possible as another listener would listen to their thoughts. As writers develop responsive ears, they will listen to the rough spots while feeling the rhythm. The technique of reading the final draft aloud helps forensic writers to make it through the final furlong of their journey in preparing a valuable document for court.

In closing, the tools discussed above provide attorneys and other professionals with a guide to develop the quality and effectiveness of the writing among their staff. Hopefully, our suggestions will help professionals improve persuasiveness and increase the positive results from their written words. In turn, this will help to place their firms ahead of the competition. Will

implementation of these ideas help attorneys to win more cases? We cannot say. However, producing higher-quality documents certainly will not hurt the probability of success. The bottom line that results from implementing a system of managing, writing, and editing documents for the court means that we expect this approach to save attorneys and related professionals both time and money in the long run. So, let the writing and revising begin. Huzzah!