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Why Write

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WHY WRITE?

GIBSON B. WITHERSPOON*

I. IS LEGAL WRITING ADVISABLE?

(a) When your law school days are complete and the practice of your chosen profession begins, writing is helpful per se because your thoughts are crystalized, your thinking clearer and sound conclusions result. When law professors are no longer available to stimulate and guide you, discipline of your mind is needed. There is no other media that stimulates self-improvement and organizes your thinking as does legal writing. When you meet a self-satisfied man you meet one who is easily pleased.

(b) An outstanding legal article will bring renown and prestige far in excess of your expectations. Ultimately good writing will win cases before appellate courts, will bring you clients and enable you to hold them after you are employed.

(c) Often the laymen think lawyers talk too much, but everyone admires those who are authors as they are recognized in professional circles as an authority in some field of jurisprudence. Your climb up the ladder of success will be greatly accelerated by legal writings.

(d) If your article has merit other publications will wish to make reprints of it and often trade magazines will publish outstanding articles on legal subjects in which their members will be interested. Even publications whose policies prohibit reprints from other journals will ask you to contribute an article on the same subject. Without too much effort you can rework your article, change the title and you will be known to an entirely new group of readers.

(e) Writing of legal articles brings lasting satisfaction to the author. Dr. Weathervane, pastor of one of the great churches in London, during the blitz of World War II, had his family killed, his home blown away and all of the antiques destroyed. The following Sunday morning he was in his pulpit as usual and said: "It is not important what happens to you individually but how

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you react." How lawyers react to opportunities can best be expressed by your legal writings. The poet expressed the thought:

"If you would not be forgotten as soon
as you are dead and rotten,
Either write things worth reading or
do things worth the writing."¹

(f) Lawyers may never advertise but when you write an interesting article on some legal subject your stature will heighten, not only with your fellow lawyers but also with judges and the public in general.

(g) "Every man owes some of his time to the upbuilding of the profession to which he belongs."² Certainly writing on legal subjects is an acceptable and appreciated method of lending assistance to others interested in the law.

(h) Reviewing books on legal subjects is recommended. The reading carefully of a new work keeps you abreast of the times and then you can build up a nice library without cost if your reviews are well written and compiled competently.

(i) When you are appointed on committees to draft resolutions be very careful of your draftsmanship and save copies in a general file for future reference. Often clubs will be impressed and you will receive lasting gratitude when a bereaved family is involved.

(j) When your article is published, advise the publisher you will require 200 to 500 reprints. Some publishers will run these off free. You should have a title page, with a reference of where the article was published. Clients interested in the subject matter will welcome your efforts and your fellow lawyers in different states will appreciate your sending them a copy. You are helping the members of your profession, not to mention building yourself up, if the article is timely and well written.

(k) Brochures prepared for an insurance company, if well organized and skillfully written, discussing the liability under the facts and injuries which proximately resulted are most helpful in effecting an adequate settlement.

II. SOME A-B-C'S FOR LEGAL WRITING

Having enumerated a few of the many reasons why legal writing

1. Verse by Ben Franklin.
2. President Theodore Roosevelt.

will be beneficial to an attorney, some of the fundamentals which are of paramount importance should be mentioned.

(a) Adaptibility and Attitude

After the Supreme Court has decided a case involving some novel or interesting point of law, you should write a short article for your state bar journal. Write it while it is fresh on your mind and the material assembled. If it is on a commercial subject, perhaps the Commercial Law League of America³ would give you space. If it is in some other field of jurisprudence, there are periodicals which will supply you with readers. For example, the insurance section of our law has many outstanding publications.⁴ If the case is one of first impression and the subject matter is practical *The American Bar Journal*⁵ will publish your product, if its contents and composition merits this distinction. Strive to make your article informative, inspiring and entertaining. Examples of articles which were said to be successful because they were reprinted by several legal magazines are: "What Care Is Required Of A Carrier By Air?," "What Is The Surplusage Rule?," "When Is An Architect Liable?" and "How Good Are Your Public Relations?"⁶

There are four prizes given annually for the best articles received in the Law Students contest,⁷ which is sponsored annually by the Conference on Personal Finance Law and Scribes, an organization of writers on legal subjects.

(b) Attitude

A humble attitude in approaching a highly controversial point of law is most admirable. You are not a Greek god rendering a decree from Mount Olympus. When an author admits there is no authority for a theory, it's refreshing. Readers often can supply a missing authority from some case in point not officially reported.

3. C.L.L.A. address is 222 West Adams Street, Chicago 6, Illinois.

4. There are many fine insurance journals; among them, *Insurance Counsel Journal* published quarterly by International Association of Insurance Counsel, 150 East Broad Street, Columbus 15, Ohio; *Federation of Insurance Counsel Journal* published quarterly by Federation of Insurance Counsel, 510 N. Hickory Street, Champaign, Illinois; *Journal of American Insurance* published by American Mutual Insurance Alliance, 20 N. Wacker Drive, Chicago 6, Illinois; *Insurance Law Journal* published by C. C. H., 214 N. Michigan Avenue, Chicago 1, Illinois.

5. Published by American Bar Association, 1155 East 60th Street, Chicago 37, Illinois. Must be original typewritten, double or triple spaced manuscript, under 3,000 words including all footnotes; also sponsor Ross Essay Contest annually.

6. The first two articles appeared in the A. B. A. Journal, June 1945 and January 1951, (inspired by *Meridan City Lines v. Baker*, 39 So.2d 541, 8 A.L.R.2d 854). The third was N.A.C.C.A.'s Cleveland Convention, 1955, (inspired by *State of Miss. for use of National Surety Corp. v. E. L. Malvaney*, 72 So.2d 424) and the fourth in *Commercial Law Journal*, July 1958; all by this author.

7. Entry blanks for law students may be obtained from Earl A. Hagan, Director of Law Student Program, Conference on Personal Finance Law, address 50 Church Street, New York 7, New York; Scribes, National Headquarters, Edgar G. Knight, Secretary, Aqueduct Building, Rochester 14, New York.

In Proverbs we read: "Blessed are the meek for they shall inherit the Earth." King Kanute, for the annual Fall Festival, would make lesser kings row him down the Rhine. One of the Caesars required all of the members of the Senate to wear aprons, denoting they were his servants. A high and mighty attitude is least desirable in writing on legal subjects.

(c) Brevity and Beauty

Perhaps brevity is the most difficult attribute for an attorney to attain. Calvin Coolidge was not one of our greatest Presidents but his brevity was admirable. After church one Sunday his wife asked what subject the sermon was about. "Sin," was his reply. "What did our minister say about it?" she asked. The President replied, "He's against it." Dr. Rudolph Flesch, who has written many practical books on the art of writing, was engaged by the Office of Price Administration to review some of its regulations. This is an example which he cites:

"Ultimate consumer means a person or group of persons generally constituting a domestic household, who purchase eggs generally at the individual store or retailers, or purchase and receive deliveries of eggs, at the place of abode of the individual or domestic household, from producers or retail route sellers, who use eggs for their consumption of food."

After one glance of this 57 word monument, he reduced the entire paragraph to ten simple words: "Ultimate consumers are people who buy eggs and eat them."⁸ Make your point as briefly as possible and use rugged, short and forceful words.

Fowler, in his book for English writers,⁹ says,

"A sentence means a set of words complete in itself, having either expressed or understood in it a subject and a predicate, and conveying a statement or question or command or explanation."

He prefers, "You commanded; I obeyed.", to "You commanded and I obeyed." One sentence should express one thought. Two sentences should be used for two thoughts. Often, however, you can work one sentence into another in place of a noun or adjective or adverb and it becomes a complex sentence.

Sentences are measured in words because they are the easiest to count. Dr. Flesch gives us the following table:

8. Flesch, *The Art of Plain Talk*, 170.

9. *Dictionary of Modern English Usage*.

"Average Sentence Length in Words	
Very Easy	8 or less
Easy	11
Fairly Easy	14
Standard	17
Fairly Difficult	21
Difficult	25
Very Difficult	29 or more." ¹⁰

So, we see a safe rule is to never use over 15 or 17 words in a sentence.

Time Magazine prides itself: "Our subscribers can understand the event in terms of a personality who caused it. For example, Joe Stalin drinks his vodka straight." Practice, patience and perseverance are necessary to have brevity but certainly it is worth your effort.

Beauty is another quality which is most difficult to obtain. You first must have an outline on which to hang your brief sentences. If you wish a peerless product, you must strive for beauty. Beauty is polishing up your original draft. Do not use the same word too frequently. A word finder,¹¹ phrase finder, or some standard work on synonyms and antonyms,¹² or familiar quotations¹³ will be helpful. Brevity and beauty are very laborious to obtain but they are the "spring training" necessary for a successful campaign in legal writing.

(d) Clarity and Common Sense

If your thinking is clear, your writing should not be confused. An authority on legal writing admonishes: "Simple words are most likely to be properly understood than rare ones, and, of course, the purpose of writing is to convey thoughts precisely."¹⁴ The best recipe for clarity is not only to use short sentences, as recommended, but also to use forceful verbs as often as possible. Nothing in the English language is so clear as the simple three word sentence of the "Dog bites boy." variety. It is assumed that you have a working knowledge of the requirements of good English construc-

10. Flesch, *The Art of Plain Talk*, 38.

11. Rodale, *The Phrase Finder*. This is really three books in one. It consists of a name word and metaphor finder plus a sparkling collection of sophisticated synonyms which will help in rewriting and revising your article.

12. E. g., Crabb, *English Synonyms*; Funk & Wagnalls *Standard Handbook On Synonyms, Antonyms and Prepositions*; Merriam-Webster, *A Dictionary of Discriminating Synonyms*.

13. Bartlett, *Familiar Quotations*; *Oxford Dictionary of Quotations*.

14. *The Importance of Good Writing in the Law*, by Sidney Teiser, first President of Scribes, delivered at the University of Virginia Law School (1937).

tion. However, there are several good books on style¹⁵ for lawyers. English Usage,¹⁶ a History of English Law,¹⁷ and a Uniform System of Citation¹⁸ will be most helpful.

"Shakespeare," says Flesch,¹⁹ "makes tyranny *range*, men *drop*, and a cause *prick us to redress*. The Bible makes children *dance*. There are 19 live verbs in the Shakespeare passage against 11 passive verb forms, verbal nouns, etc.; in the Bible passage the ratio is 20 to 11. Maybe you will say I am unfair in using the Bible and Shakespeare as examples. After all, articles are usually written to meet a deadline, by writers who don't dream of being literary geniuses; so why compare their style with all-time masterpieces? I admit I am a little biased here; but anyone can try to use active, working verbs whenever possible. It won't make him a Shakespeare or a prophet but it will make him write good, plain English."

Another authority also recommends the Bible: "The great works on religion are masterpieces of stylistic rhythm. Even from this standpoint alone I recommend the vigorous prose in the Holy Bible exemplified in Genesis, in the writings of Saints Matthew, Mark, Luke and John, and especially in Ecclesiastes, The Proverbs and the Revelations. For English style I still prefer the King James Version. Also analyze the diction and sentence structure of those more modern masters of oratory, Robert Ingersoll and William Jennings Bryan."²⁰

Remember the majority of your readers will be lawyers just like yourselves, so do not try to impress the highbrow who probably will never read your article anyway. Writing, like law, is a jealous mistress. Success in legal writing is often obtained by giving careful attention to small trifles, some of the more important ones we have mentioned. Be brief, be clear, use short sentences in proper sentence structure and the proper words and phrases, which all make for perfection. Emerson²¹ says: "There is no luck in literary repetition. They who make up the final verdict upon every book are not the partial and noisy readers of the hour when it appears;

15. Miller, *On Legal Style*, 43 Ky. L. J. 235 (1955); Style Manual, Lawyer's Cooperative Pub. Co., Rochester 14, N. Y.

16. Fowler, *The Kings English*; Fowler, *A Dictionary of Modern English Usage*; Flesch, *The Art of Readable Writing*; Flesch, *How To Make Sense*; Pyles, *Words And Ways of American English*.

17. Holsworth, *History of English Law*; Dickens As A Legal Historian, Yale University Press, New Haven, Conn.

18. Published by The Harvard Law Review, Gannett House, Cambridge, Mass.

19. Flesch, *The Art of Plain Talk*, Chap. 8.

20. Miller, *On Legal Style*, 43 Ky. L. J. 235 (1955).

21. Emerson, *Essay On Spiritual Law*.

but a court as of angels, a public not to be bribed, not to be entreated, and not to be overawed, decides upon every man's title to fame. Only those books come down which deserve to last."

Use your imagination and picture your audience and not only strive for readability but also strive for interest. Often lawyers' writing is complex, unreadable and obscure in its ultimate meaning. Daniel Webster observed: "The power of clear statement is the greatest power at the bar."²² Sir Winston Churchill admonishes: "Short words are best and the old words when short are best of all."²³ Avoid dealing in abstractions. "Abstract concepts are usually vague because no word ever means exactly the same thing to two different people. Writing cannot remain at the abstract level for long and still be clear. We can guide our readers to the conclusions we have in mind if we put concrete cases and examples after our abstract statements. Dickens has proven that symbolic and catchy names—even of legal characters—can be made to live indelibly in the readers' memories. When we make our writing less abstract and more personal, we also make it clearer, more readable, and more interesting. A clear style is one that is sincere, simple, coherent and direct."²⁴

III. CRITICISM AND GUIDEPOSTS

No less an authority than the Executive Secretary of the A. B. A.²⁵ says: "Try to make everything as ambiguous as possible so that the readers cannot possibly understand what you are talking about the first time. If he doesn't understand you, he'll think you're smarter than he is."

Never write a simple sentence—it is too simple. Clutter it up with not less than two participial clauses and add a few parenthetical phrases for added thought and clarification. Explain one long sentence with another longer and more repetitious one.

Everything must be emphasized, because *everything* you say is important."

The author says this satire reflects the reaction of lay members.

Edward H. Warren²⁶ criticized current legal literary style saying: "Literary style, or lack of literary style of many judges, pro-

22. Harvey, *Reminiscence & Anecdotes Of Daniel Webster*, 118.

23. Cole & Bunyon, *Sir Winston Churchill: A Self-Portrait*, 142.

24. Gerhart, *Improving Our Legal Writings: Maxims From the Masters*, 40 A.B.A. J. 1057 (1954). Gerhart is a former President of Scribes and this is a very interesting and practical article.

25. Stecher, *Comments on Lawyers Writings*, 44 A.B.A. J. 610 (1958).

26. Professor of Harvard Law School, *Criticism*, p. 29, *Spartan Education Guideposts*, p. 30, Houghton Mifflin Co., Boston, Mass. (1942).

fessors of law, and editors of, and contributors to law reviews is deplorable (or at least it so seems to me). What is the trouble? Three sources of trouble may be mentioned: (1) Sloppy thinking; (2) a love of 'half-tones'; (3) a love for resounding words and expressions."

Fortunately, Professor Warren did not limit his observations to caustic criticisms, but this legal disciplinarian gives us the following seven guideposts to effective legal styles:

"1. Never dictate anything which calls for careful thinking. Write out everything (except quotations) in longhand. If you dictate, you are likely to get into a habit of using words of many syllables like 'formulated' or 'constituted.' If you write in longhand you are likely to get into a habit of using words of one syllable like 'made' or 'was.'

2. Make it a habit of life to spend ten minutes a day in reading something in the Psalms or Proverbs or Gospels; and treasure the short, terse, depicting, dynamic, devastating words and expressions.

3. See to it that not less than sixty-six per cent of your words are words of one syllable, and that not less than eighty-three per cent are words of one or two syllables.

4. Go over the drafts as they come back from the typist and rub and rub and rub again until you have massaged away every muddy word and every waste word.

5. If you are dealing with a tough juristic topic, lighten the strain from time to time. If one page has to contain a headache, balance it with another page that contains a smile. A joke may be the most effective of arguments, and the most dignified dignity is an unstilted dignity.

6. *But* avoid being 'cheap' as you would shun the plague. You are living in a picture age; picturesqueness is the order of the day. All right, adapt yourself, be picturesque; but *never* be cheap. And be keenly conscious of the fact that the line between the picturesque and the cheap is *not* a bright line.

7. Let learning be your servant, not your master; the deepest learning is the learning that conceals learning. The bread of an idea is worth more than a stone of information. Do not spread out in full your laboratory notes. Do not be *magis in opertione quam in opere*. Appraise your productivity, not by quantity, but by quality. Read much, discuss much, ponder most, write a little."

IV. CONCLUSION

There is an old Latin maxim which roughly translated means, "Even if you know something nevertheless, if you cannot express it, you just as well have been stupid in the first place."

If you have a *strong incentive* to write and a determination which will carry you through, the result will most often be successful. Napoleon lost the Battle of Waterloo not because he and his generals were not great military leaders but because their soldiers had lost their incentive to win. An athletic coach will cite you many modern examples. So, a strong incentive to write is most essential.

"When you become a legal writer you join a great brotherhood. Admittedly it is a brotherhood doomed to a plodding pedestrian gait along most of the way, doomed by the demands of coverage and of accuracy, by the firm prod of scope and the incessant needling of qualification. But, if you get this sort of content across to your reader in doses that are palatable, even though they are unusually far from delectable, you have achieved something. Legal writing as a whole will never be scintillating, but it need not be half so dull as it usually is."²⁷

Writing of legal subjects is perhaps like a cathedral. When you look at it from afar it is cold, gray and very uninviting. When you get inside, however, sit down and meditate, you see the sun rays deflected through the beautiful stain glass windows, depicting celestial tranquility and the promise of eternal reward. Certainly if you meditate and follow through with your legal writing, your reward will be eternal and most gratifying. Some day you will be gone and perhaps forgotten but your legal writings will remain for posterity. Longfellow expressed this thought:

"Lives of great men oft reminds us
We can make our lives sublime.
And departing leave behind us
Footprints on the sands of time.
Footprints that perhaps another
Sailing o'er life's solemn main,
A forlorn and brother,
Seeing, shall take heart again."²⁸

27. Miller, *On Legal Style*, 43 Ky. L. J. 235 (1955).

28. From Psalm of Life.

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