A MOTHER GOOSE GUIDE TO LEGAL WRITING

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Legal writing can be dreary,
It can be perfunctory too,
But if you stick with me,
I'll show you what to do.

There are guides galore,
That say what not to do,
But I made this one special,
For writers just like you.

So join me in my quest,
To make writing amusing,
When you're done I hope you'll say,
Boy, that was worth perusing!

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INTRODUCTION

The playground was full of screaming, sticky, Elmer's-glue-smelling children. Her bouncy blonde curls shined in the sunlight as she wiped her pudgy, peanut-butter-and-jelly-stained fingers on her denim overalls. Two beads of sweat trickled down her forehead. She was preparing for the ultimate feat: swinging off the swing at its highest point and landing in a spectacular two-legged stand to the awe and envy of every two-year-old child on the playground. She pushed off with every ounce of power she had in her tiny body and used the momentum to swing higher and higher, sweat threatening to loosen her grip on the chain handles. She could see the entire playground and was about to leap from the plastic seat that was her nemesis that day when one word denied her dream: No. She did not dare ask why, fearing the because-I-said-so phrase she knew too well. From that day on, little Jessica vowed to get answers.

Like the word "no" that snatched away my dream on the playground, legal scholarship often focuses on what not to do in the legal field. This trend of naysaying is not helpful to law students and practitioners who would benefit more from a guide on what to do and the reasons behind what not to do in legal writing. In this Article, I hope to give readers a better idea of what to do in legal writing, and I hope to do so in a fun and creative way.

In this Article, I attempt to shed some light on the tricky aspects of legal writing, including grammar, structure, content, organization, and punctuation. Part I of this Article discusses the structure and content of legal writing. Part II explains punctuation and grammar. Part III examines citation.

I. THE NITTY-GRITTY

Legal writing is like a play: the parties are the actors, the situation is the scene, and the events are the plot. But that alone does not create a play. As a legal writer, or director (in keeping with the theme of the play), your job is to put all those pieces together in the most persuasive and clear way to get your point across to the audience. Every decision you make as a writer, or director of your *pièce de résistance*, is strategic. You may decide to use passive voice to emphasize the action rather than the actor, you may construct your headings to persuade the judge to accept your position, or you may avoid stuffy legalese to promote clarity and transparency in your writing. These are all decisions you make in the content and structure of your writing.

When the actor is irrelevant,
Use the passive voice,
But if you're being vague,
Don't make that writing choice.

Countless legal writing professors warn students of the dangers of passive voice. On one hand, they are right to do so. Passive voice tends to be vague because it hides the actor and creates confusion when discussing multiple actors. Law students might receive criticism for passive voice because its usage signals to the professor that the students have holes in their research or do not grasp the subject matter. For example: The bill was passed. Well, who passed it and for what reason? Even if you do know the answer, your professor will want you to show that, and passive voice tends to prove that you do not. Also, passive voice tends to be wordier and indirect, so choose wisely, young legal writer.[1]

On the other hand, your professors are wrong to admonish all use of passive voice. Passive voice can be used in the following circumstances:[2]

When the actor is unknown.

Example: Stonehenge was built somewhere between 3000 BC and 2000 BC.

Reasoning: We do not know who built Stonehenge.

When the actor is irrelevant.

Example: A monument will be built for the best legal writer in the world.

Reasoning: We do not care who will be building this monument; we care who the best legal writer in the world is!

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1. See Eugene Volokh & J. Alexander Tanford, How to Write Good Legal Stuff 1 (2009), available at http://law.indiana.edu/instruction/tanford/web/reference/how2write good.pdf.

2. This sentence, for example, employs proper passive voice. When written in active voice, it would state the following: One can use passive voice in the following circumstances. However, the actor is irrelevant in this case because the Author is more concerned about when passive voice should be used rather than who is using the passive voice.

When the author wants to be vague about who is responsible for a given action.

Example: The promises were broken.

Reasoning: No one wants to own up to this one.

When talking about a general truth.

Example: We were born to rock.

Reasoning: If Quiet Riot says so, it must be true.[3]

When emphasizing the act rather than the actor.

Example: The Bar exam was no longer required.

Reasoning: Who cares who decided that? No more Bar exam, rejoice!

To help in your quest for passive voice, try using the search function in your word processor for "by," "it is," and "it was."[4] Next, try putting the actor in the front of the sentence and have him or her doing the action. It might help to envision your sentence as a play: who is doing what and for what purpose? You do not want to say that the sword was wielded and that a scream was heard—you want to say that Odatheus wielded the sword, making the young heroin, Gwenopola, scream in fright!

Avoid nominalizations,
Words ending in –ion,
Turn them into verbs,
With your fancy pen.

Nominalizations are commonly words that end in –ion. Avoiding the use of nominalizations makes your writing more direct, less wordy, and more forceful. Using the verb form of the word instead of the noun form will make the reader focus on the action in the sentence. For example: The counselor made an objection to opposing counsel's statement. In this sentence, "objection" is the nominalization. If you

3. See Quiet Riot, (We Were) Born to Rock (Pasha Records 1984) (stating that "we were born to rock").

4. Volokh & Tanford, supra note 1, at 1.

turn the nominalized word (objection) into "object," you will see how much better it sounds: The counselor objected to opposing counselor's statement. We cut two words off right there. Another example is "filed a motion," which can easily be turned into "moved."[5] Also, it is fine to use possessives. Do a quick search in your word processor for "of the" and turn those phrases into possessives. For example, "the docket of the court" can turn into "the court's docket."[6]

The word "herein,"
Can mean different things,
Be sure to be specific,
Before you put it in.

Don't use big words,
Just to sound legit,
Say it in plain English,
And you'll make a bigger hit.

Latin is a language,
That you should avoid,
If you use it all the time,
You'll be unemployed.

'Will' creates a promise,
For a future action,
'Shall' means 'has a duty,'
That someone has in a transaction.

We don't use couplets,
Or doublets anymore,
Just stick to one word,
No synonyms galore.

5. See Judge Mark P. Painter, Legal Writing 201: 30 Suggestions to Improve Readability or How to Write for Judges, Not like Judges 17 (2002), available at http://www.plainlanguagenetwork.org/legal/legalwriting.pdf.

6. Volokh & Tanford, supra note 1, at 2.

Like many examples of legalese,[7] "herein" is invariably ambiguous. It could mean "in this definition," "in this subsection," "in this section," or just "in this agreement." According to Bryan Garner, the wizard of writing, "using herein borders on malpractice."[8] Garner also reproves the use of "and/or," "deem," "provided that," "pursuant to," "said" when used as a substitute for "the," "same" when used as a pronoun, "such," and "whereas."[9] These phrases should be avoided because they can be ambiguous and unclear.

Good legal writers will use words that they understand and that their audience will understand. In the same vein, nothing is worse than using the wrong word. I do not know how many times I have heard people use the word "impartial" to mean the exact opposite.[10] Another example is the word "cursory." Cursory means "rapidly and often superficially performed or produced," but people often use this term to mean "preliminary." Preliminary means "introductory or preparatory."[11] You do not want to say that you performed a cursory review of a client's papers, entailing that your review was hasty, when what you mean is that you performed an initial, preliminary review of the papers.

Another example of this wrong-word-choice phenomenon is the use of "over" as a synonym for "more than" and the use of "since" as a synonym for "because." The word "over" should be used when referring to the physical space above you, such as a bird flying over the park. Do not use "over" when referring to amounts. Instead, use "more than" when referring to amounts, such as having more than fifty dollars in your pocket or a firm having more than one hundred awards for

7. Legalese refers to the language of lawyers that is often criticized for its strange style and incoherence. See Robert W. Benson, The End of Legalese: The Game Is Over, 13 N.Y.U. Rev. L. & Soc. Change 519, 520–30 (1985) (identifying the characteristics of legalese and the criticism surrounding its style and unintelligibility, such as the use of rare, Old and Middle English words, doublets, misplaced phrases, absence of nouns, and pompous tone).

8. Bryan Garner, Why Lawyers Can't Write, Bryan Garner on Words, A.B.A. J. (Mar. 1, 2013, 9:00 AM), http://www.abajournal.com/magazine/article/why_lawyers_cant_write.

9. Bryan Garner, Garner on Language and Writing 180–81 (2009).

10. Impartial means that one is unbiased. Partial means that one is biased (i.e., that someone favors one side over the other). Impartial Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/impartial (last visited Sept. 15, 2014); Partial Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/partial (last visited Sept. 15, 2014).

11. Cursory Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/cursory (last visited Sept. 15, 2014); Preliminary Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/preliminary (last visited Sept. 15, 2014).

excellence in legal writing.[12] Use "because" to denote a causal relationship and use "since" to denote a temporal relationship.[13]

Double negatives are another trap for legal writers. Some examples of double negatives are: "not uncommon," "not inappropriate," "not insignificant," and "not incapable." Instead, replace double negatives with their corresponding single positives: "common," "appropriate," "significant," and "capable." [14]

In contract writing specifically, you should use the word "shall" with an actor to impose an obligation on that actor. Do not use "shall" to define a term, such as in "recreational activity shall mean hiking, swimming, rock climbing, fishing, and nature study." In this example, you should use "means" instead of "shall mean" because there is no actor to whom a duty is imposed. A better tip is to delete the word "shall" altogether. Instead, use "must" or "will." "May" specifies options and rights, and it is permissive.[15]

Doublets and couplets are products of Norman French and Old English.[16] If two or three words are synonyms for each other, use one and be consistent. This is where substantive knowledge of the subject matter comes in because a good legal writer will understand that forms and boilerplate are not always correct or effective. As a good legal writer, you need to dissect those forms, if you choose to use them, and understand what the effect of each word is. Some examples of couplets are "right, title, and interest" and "sell, transfer, assign, and convey." In the second example, just use the word "transfer." All those words mean the same thing. A doublet is similar to the couplet but consists of two words, such as "free and clear" and "null and void." However, there are instances in which two words have separate definitions, such as "joint

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12. The *AP Stylebook* has now authorized the use of "over" as a replacement for "more than" to indicate greater numerical value. Andrew Beaujon, AP Removes Distinction Between 'Over' and 'More Than,' Poynter (Mar. 20, 2014, 5:52 PM), http://www.poynter.org/mediawire/244240/ap-removes-distinction-between-over-and-more-than/. Bryan Garner also states in *Garner's American Usage* that "*over* is interchangeable with *more than*." Bryan A. Garner, Garner's Modern American Usage 601 (3d ed. 2009). However, the *AP Stylebook* "decided on the change because it has become common usage." Thus, the Author still insists on the traditional approach instead of using the terms interchangeably, as it is more grammatically correct to do so. Lisa Fernandez, "More Than" Vs. "Over": Journalists Threaten "Uprising" Over AP Rule Change, NBC Bay Area (Mar. 20, 2014 2:27PM), http://www.nbcbayarea.com/news/local/Uprising-Over-AP-Stylebook-Change-Over-More-Than-Are-Both-OK-Incites-Backlash-251287521.html.

13. Contra Garner, supra note 12, at 748 ("In modern print sources, the causal sense is almost as common as the temporal sense.").

14. Volokh & Tanford, supra note 1, at 4.

15. Bryan A. Garner, Legal Writing in Plain English § 35, at 125–26 (2d ed. 2013).

16. Judge Mark P. Painter, Legalese Leads to Losing Argument, Judge Mark Painter, http://www.judgepainter.org/legalwriter34 (last visited Sep. 15, 2014).

and several." A useful tip to spot the use of synonyms, couplets, or doublets is to use the search function on your word processor to find the words "or" and "and."[17]

Do not blindly adhere to a standard legal form and perpetuate terrible writing. This is a major issue in the legal industry because law students and lawyers constantly do what has been done before them in a blind fashion without thinking first, just for the sake of perpetuating what they think is expected. Instead, learn to think for yourself and do your own research before following the pack.

Redundant words are in the same sinking ship as couplets and doublets. Redundant words, also known as pleonasms, are words that mean the same thing as one another. You cannot "revert back," "plan ahead," have a "personal opinion," be "exactly the same," "completely destroy," or "wake up at 3 a.m. in the morning."[18] There are also absolutes that cannot be qualified, such as the word "unique." "Unique" cannot take a qualifier, meaning that someone cannot be "more unique" or "very unique."[19]

"Clearly" and "really,"
Are called intensifiers,
Don't use them in your writing,
Unless it's a satire.

Sentences should be short,
And easy to digest,
When it comes to length,
Short and sweet is best.

Your phrases should have meaning,
And add to your assertion,
If they have no meaning,
I would question their insertion.

Intensifiers are adverbs such as "clearly," "obviously," "really," and "very" that are commonly used to characterize an opposing party's argument. While many legal writers think that these words are effective to weaken the opposing side, using these words has the opposite effect,

17. Bryan A. Garner, Garner's Dictionary of Legal Usage 294–97 (3d ed. 2011).
18. Garner, supra note 12, at 700–01.
19. See id. at 531.

making the person using them appear weak instead.[20] In legal writing, your facts should speak for themselves. The use of intensifiers only demarcates a faulty proposition or an absence of facts or authority to support an assertion.[21] Instead of using an intensifier, try finding a single, distinctive word instead of cluttering your writing with adverbs and weakening boring words by tacking on intensifiers.

Shorter is better not only in life[22] but also in writing. Among many things, the legal industry is known for its high rate of depression and the use of many words to express a single concept.[23] Often, legal writers think that they need to use more words to clarify their arguments, but that just makes it worse. The old adage of "say what you mean and mean what you say" holds true in legal writing. Your writing is stronger if you can get your point across in a short, concise manner rather than in paragraphs of convoluting dross.[24] Instead of trying to fit every thought into one long sentence, break the sentence into small chunks with one thought in each sentence. It is also helpful to avoid using qualifying phrases that break up the main thought of the sentence. To do this, either eliminate them or put them in a separate sentence. For example: The court held that final exams, although fun, are exhausting. The "although fun" phrase breaks the reader's attention and breaks the flow of the sentence, and it would be better to make that phrase its own sentence or delete it altogether.

One of the most difficult lessons for young legal writers is having confidence in their arguments and decisions. If you think your lack of confidence cannot be interpreted through your writing, you are wrong. There are two ways in which confidence—the lack thereof and the excess of it—appears in your writing: (1) the use of "weasel" words; and (2) the use of meaningless, often pompous phrases.

In the first scenario, legal writers often avoid taking a clear position because they are afraid of being wrong.[25] Some examples of

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20. Kenneth F. Oettle, Eschew Exaggerations, Disparagements, and Other Intensifiers, 87 Mich. B.J. 50, 50 (2008); Lance N. Long & William F. Christensen, Clearly, Using Intensifiers Is Very Bad—Or Is It? 45 Idaho L. Rev. 171, 171–72 (2008).

21. Oettle, supra note 20, at 50.

22. The Author is a staggering five-foot, one-inch tall.

23. See Debra Cassens Weiss, State Bars Battle Lawyer Depression; Legal Profession Ranks Fourth in Suicide Rate, A.B.A. J. (Jan. 22, 2014, 11:45 AM) http://www.abajournal.com/news/article/statebarsbattlelawyerdepressionlegalprofessionranksfourthinsuicid.

24. For an example of how to cut your writing to maintain only what is essential, see this court order from Judge Steven Merryday from the United States District Court in the Middle District of Florida in Tampa in which he shows the attorneys how they could have reduced the substance of their motion at http://cdn.lawyerist.com/lawyerist/wp-content/uploads/2012/11/Merryday-order.pdf.

25. Volokh & Tanford, supra note 1, at 4.

this include using phrases such as "appears to," "tends to," "seems to," and "perhaps." Instead of using these indecisive phrases, make a clear assertion and support it with enough facts and authority so that it can stand on its own. Just like you would not want to send your troops into battle with commands like "if they shoot, maybe shoot back," you do not want to send your appellate brief into the judge's chambers without a clear position, answer, or conclusion.

In the second scenario, legal writers who are either arrogant or lack confidence bury their assertions in meaningless phrases. Some examples of this include starting sentences with: "it is important to note," "the fact that," "despite the fact," and "I would argue that." These phrases are empty because they add nothing of substance to you statement. Instead, omit them.[26]

You should always know your audience,
Before starting any task,
If you're writing to a judge,
There are a few things you should ask.

Are there any local rules?
Or preferences of the court?
Is the judge knowledgeable in the field?
If not, don't sell the fact section short.

If writing for your boss,
Be objective and forthright,
If writing for your client,
Be persuasive and fight.

Every piece of legal writing has a purpose. If you are writing for a court, you must look at that court's local rules of procedure and its preferences or rules on formatting. You should also find out if the judge for whom you are writing requires anything further or deviates from the local rules in any way. The last thing you want to have happen is for the judge to dismiss your motion on a technicality. If the court allows leeway, take that opportunity to show the court your skills—be creative and do not impose arbitrary restrictions on yourself.[27]

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26. Id. at 5.
27. See Painter, supra note 5, at 7.

Start with a statement,
Of what the case is about,
It should be fewer than 75 words,
And leave the reader with no doubt.

State the facts succinctly,
And try to be concise,
Don't leave out facts,
Even if they're not nice.

Don't use too many dates,
Unless they really matter,
Don't use them for padding,
To make your paper fatter.

The introductory paragraph, or preliminary statement, of any legal writing should conform to the inverted pyramid used in journalism to describe the situation and your position. The inverted-pyramid approach instructs writers to put the most important information at the top.[28] Again, it is helpful to keep this section concise while informing the reader (this is where your audience comes in) of whatever it is you are going to discuss throughout your motion, article, opinion, etc. Most importantly, do not forget to tell the court, or your audience, what you want it to do.

As you will probably remember from your first-year legal writing course, it is unethical and maybe even disbarment-worthy to leave out facts (or law) that are unfavorable to you or your client. A good legal writer will distinguish, deemphasize, or minimize those facts rather than leave them out completely. To do this, a good tip is to sandwich those unfavorable facts between favorable facts.[29] Another method is to place unfavorable facts next to favorable ones.

Using exact dates in your work product signals to the reader that those dates are important. If that is your goal, go ahead and use exact

28. This approach is used in journalism because editors can "cut from the bottom" of the article so it can fit a fixed size, thus allowing the less important information to be cut instead of the more important information. See Christopher Arnold et al., Purdue Univ., The Inverted Pyramid Structure, Online Writing Lab, https://owl.english.purdue.edu/owl/resource/735/04/ (last edited Apr. 6, 2013).

29. By putting the most favorable facts up front, you invoke sympathy from the court, if that is your audience. John C. Dernbach et al., A Practical Guide to Legal Writing & Legal Method 284 (3d ed. 2007).

dates. If you want to show a timeline, try using months in chronological order or saying "next" to show a chronology.[30] If you choose to use exact dates, be sure to add a comma after the year if the sentence continues. For example: The date of March 18, 1989, is a day that the world will celebrate in the future. If the sentence ended with the year, then a comma would be inappropriate. This same principle applies when you write a city and state. For example: The weather in Gulfport, Florida, is always nice.[31]

It is helpful to use headings,
To inform the reader of what's to come,
They should give some context,
Of where you're coming from.

Humanize your client,
Put some feeling in that brief,
Ask for what you want,
In that prayer for relief.

Headings, also called point headings, are a commonly underrated tool in legal writing. For the sake of this Article, we will be talking about headings in the context of an appellate brief. When done correctly, a reader should be able to get a brief outline of your argument, or the premise of your argument, just by reading the headings. Many authors make the mistake of merely regurgitating the question presented and restating it as an affirmative sentence. An effective heading will state the applicable law, how the law is applied to your facts, and the conclusion to be arrived.[32]

I know many professors tell you that headings are signposts, and you are probably asking yourself what that even means. I understand this feeling of confusion because it seems like another code word used in the legal industry right up there with "vis-a-vie" and "conclusory." Signposting just means that the headings should alert the reader of what is to come.[33] Like those big yellow signs on the highway that depict a

30. Bryan A. Garner, The Winning Brief 386–87 (2d ed. 2004).

31. As a side note, use the correct abbreviation for cities, which is not always the two-letter postal code. For example, Florida is often abbreviated as "Fla." in text. The Bluebook: A Uniform System of Citation 436 tbl.T10.1 (Colombia Law Review Ass'n et al. eds., 19th ed. 2010).

32. Painter, supra note 5, at 11.

33. Id.

curvy black arrow alerting the driver that the road curves ahead, your headings should tell the reader what to expect down the "road" of your paper. These headings should also be persuasive. You are lucky, legal writer—here is another chance to persuade your audience. Use every character, formatting tool, and blank space effectively.

The importance of using "because" in headings cannot be overstated. "Because" is the glue to the heading because it connects the issue for the reader. It is insufficient to say that the lower court erred in admitting certain evidence. You must tell the appellate court why the lower court erred in doing so. Also, avoid making circular arguments. Do not just say the lower court erred in admitting evidence because the evidence is inadmissible—that says absolutely nothing. Was the evidence obtained in an unlawful way because the police did not have a warrant to conduct a search and seizure pursuant to the rules of procedure? If so, you should probably say that.[34]

Another important aspect of legal writing is the story our legal writing tells. You might know this as the facts of a case, but it is far more constructive to think of this as a story. Stories are based on real people and real events, and our job is to bring that story to life. Without the story, all you have is the law, which cannot stand alone to support any claim. Always remember for whom and for what you are fighting and include the context in which the facts occurred. Legal writing is often unattached from feeling, but storytelling is apersuassive tool in legal writing. People will forget facts, but they will not forget a story.[35] A poorly written piece of legal writing intimates that you as the attorney did not spend much time writing it, researching it, or caring about the story for which you are advocating.[36]

In keeping with the theme of storytelling, it is important to use names rather than generic terms. For example, unless it is strategic to do so, use the party's name instead of "plaintiff" or "defendant." Tell your audience where the scene of the accident was rather than calling it "the scene of the accident," and tell your audience the date of the accident rather than calling it "the date in question."[37]

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34. Frederick Bernays Wiener, Essentials of an Effective Appellate Brief, 17 Geo. Wash. L. Rev. 143 (1949) *in* Robert J. Martineau, Appellate Practice and Procedure 374 (1987).

35. Marie Buckley, The Lawyer's Essential Guide to Writing: Proven Tools and Techniques 87 (2011).

36. See Courtpoint, Chief Justice John Roberts on the Topic of Writing, YouTube, (Mar. 11, 2008), https://www.youtube.com/watch?v=ZIjBzn7rbPE (stating that poor legal writing shows a lack of confidence and lack of involvement in the substance of the writing and the client's case).

37. Volokh & Tanford, supra note 1, at 2.

CREAC is the key,
For any legal pro,
I will walk you through it,
Get ready, here we go.

Start with the conclusion,
To introduce the issue at hand,
It answers your client's question,
In a way anyone will understand.

Next comes the rule,
From the law and cases,
Explain its interpretation,
And its legal basis.

To expand on the rule,
Include rule explanation,
Use facts from cases,
To act like a rule translation.

Include the facts,
And the holding of the court,
Then put in the reasoning,
For which the rule should support.

Application is the key,
Follow the form of the last phase,
Compare and contrast your facts,
In a clear and concise way.

Use language from the rule,
Use topic sentences to lead,
Applying fact to law,
Is all you really need.

End with a short conclusion,
In which you restate the end,
State your decision,
And what you recommend.

Every legal writing professor will have a different acronym to teach legal writing. Some professors like CREAC, some like TREAT, some like CRAC, and some like IRAC. These are all the same in their most basic forms, but I would suggest CREAC or CRAC because these put the conclusion first, and you should always start with your conclusion. I will be using CREAC for this Article. Essentially, you start with the conclusion, the thesis, or the issue.

In this first step, C, briefly state the issue and your position on that issue. Be sure to keep this short and straightforward. In this step, you want to state the question presented by the issue and then answer it. In R, state the rule. This often involves synthesizing rules from multiple sources, such as statutes and caselaw. The rule should be the rule of law that governs the issue at hand. In E, you expand on the rule (R) by explaining how the rule has been applied to several situations and explaining how the rule is interpreted and applied. You will most likely need to include some case descriptions in which you discuss the facts of a certain case, the court's holding in that case, and the court's reasoning in reaching that holding. In the reasoning portion, do not just restate the holding or use circular statements. Instead, explain why the court ruled a certain way. Did the court use certain facts or distinguish any facts? Did the court involve policy in its decision? Did the court find certain facts more credible than others? Do yourself a favor and include citations in this section. If not, you will likely fail.[38]

The application section is the most important section because this is how you ask your audience to believe you. This is your time to show some proof. In A, apply the rule to the facts in your case or issue. This often involves comparing and contrasting the cases you used in RE with the facts in your case involving your client. Is this case different from the other cases you discussed? Is it the same? Why should the court part from precedent, or why should the court rule as it has in the past, if that is what you are asking it to do? In C, you conclude by restating your original position or thesis. This section should be brief.[39]

II. ROLL WITH THE PUNCTUATION (AND GRAMMAR, TOO)

According to United States Supreme Court Justice John Paul Stevens, "if someone uses improper grammar, you begin to think, well, maybe the person isn't as careful about his work . . . ."[40] If you think

38. Mary Beth Beazley, A Practical Guide to Appellate Advocacy 75–90 (3d ed. 2010).
39. Id.
40. Interview by Bryan Garner with Justice John Paul Stevens, United States Supreme Court Justice (Feb. 27, 2007), 13 Scribes J. Legal Writing 41, 49 (2010).

that your outstanding substance will compensate for your typographical errors, misplaced commas, and wrong word choice, think again. The people for whom you are writing—judges, partners, bosses, or colleagues—care about grammar and punctuation, and they will judge every lazy mistake that you could have corrected if you cared a little more.

Punctuation is what gives meaning to your written words because it determines the type of sentence (command, question, exclamatory statement, etc.) and determines the tone and inflection of your writing. Grammar is how we string thoughts and words together into a symphony of effective communication. Proper word choice and readability give your writing clarity and purpose.[41]

When it comes to punctuation,
Don't be afraid,
But pay close attention,
This is where most mistakes are made.

'Which' needs a comma,
A comma with 'that' should be removed,
'Which' is nonessential,
'That' contains material that can't be moved.

The use of "which" versus "that" is one of the most pervasive errors I have seen in my years of editing. "Which" is used for nonrestrictive clauses. "That" is used for restrictive clauses.[42] Nonrestrictive (unnecessary) clauses introduce material that is not essential to the meaning of the sentence—that is, when taken out of the sentence, the sentence would still make sense.[43] Restrictive (necessary) clauses are necessary to the meaning of the sentence and cannot be taken out without making the sentence inaccurate. The use of "which" should always be set off with a comma before "which." "That" does not require a comma.[44] The following are a few examples:

> The bed that is located in my bedroom is the most comfortable bed on the planet.

41. William Strunk, Jr. & E. B. White, The Elements of Style xiii–xviii (4th ed. 2000).
42. Chicago Manual of Style 298 (Univ. Chicago Press eds., 16th ed. 2010).
43. Nonrestrictive is just what the name says—the clause does not restrict the meaning of the sentence—whereas restrictive clauses do restrict the meaning of the sentence.
44. Chicago Manual of Style, supra note 42, at 298.

> Beds, which are commonly found in bedrooms, should be comfortable.

In the first example, you cannot take out "that is located in my bedroom" because that would make the sentence inaccurate. In that example, I am stating that the bed in my bedroom is the most comfortable bed on the planet, and there is no other bed in existence in any other room that is more comfortable than the one in my bedroom specifically. Who knows, I could have a bed in every room of my house, but the one in my bedroom is the one I am referring to in this example.

In the second example, you could take out "which are commonly found in bedrooms" and the sentence would still make sense. Beds should be comfortable and that fact does not change if the bed is found in another room besides the bedroom.

With quotation marks,
A period goes inside,
Commas do too,
Semicolons and colons go outside.

With two independent thoughts,
A comma goes between,
If there is one actor and two acts,
A comma should not be seen.

Commas separate,
Lists of three of more,
After an introductory clause,
And before 'and,' 'but,' 'yet,' or 'so.'

With two independent clauses,
A semicolon can be used,
Don't use a conjunction,
Those two thoughts can't be fused.

As stated in the poem, periods and commas belong inside the ending quotation mark. Semicolons and colons are placed after the quotation mark. When using exclamation points or question marks, you need to know how the particular quote was originally quoted. If the

quote contains an exclamation point or question mark, that punctuation goes inside the quotation mark. If you, the author, are adding a question mark to the quote, it belongs outside the quotation mark.[45]

Commas are the bane of most writers' existence. Generally, commas belong before the conjunction in a sentence with two independent clauses. An independent clause is a clause that can stand alone as a complete sentence. A conjunction is the fuse. Conjunctions include: "and," "but," "for," "so," "yet," "or," and "nor." If the clauses before and after the conjunction can stand alone, you need a comma in between.[46] The following are a few examples:

> I love legal writing, and I hate math.
>
> I tried to do math once and nearly died.
>
> I will not attempt math problems while I am still breathing.

In the first example, "I love legal writing" and "I hate math" are independent clauses. Therefore, a comma is placed before "and" to denote that the two clauses can stand alone. There is no relation between my love for legal writing and my hatred for math. I could have put a period between the two and called it a day, but I did not because I wanted to show you how awesome commas are.

In the second example, "nearly died" is dependent on "I tried to do math." I nearly died because I tried to do math. If I had put an "I" before "nearly died," to make it "I nearly died," a comma would be appropriate. A semicolon would have been lovely there (without the conjunction, of course), but we will get to that later.

In the third example, I tried to trick you, and I am not sorry about that. The word "while" is a subordinating conjunction.[47] The subordinating conjunction is like the conjunction's annoying little brother. A subordinating conjunction automatically makes a clause dependent, which means that you do not need a comma. "While I am

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45. Texas Law Review, Manual on Usage and Style § 1.08, at 4 (12th. ed. 2011).

46. Strunk & White, supra note 41, at 5.

47. Other common examples of subordinating conjunctions are: after, although, as, as if, as long as, as though, because, before, even if, even though, if, if only, in order that, now that, once, provided, rather than, since, so that, that, through, without, unless, until, when, whenever, where, whereas, wherever, whether, while, within, and besides. Monmouth University, Tutoring and Writing Services, Conjunctions (Aug. 8, 2011), available at http://www.monmouth.edu/uploadedFiles/Resources_for_Writers/Grammar_and_Punctuation/Conjunctions.pdf.

still breathing" is not a complete sentence (unless I add ", I will learn to speak Mandarin" at the end). As you can see, you cannot have either end of the "while" alone; you need both sides to make the sentence complete. Do not separate those two clauses—they need each other to survive!

When starting a sentence with a subordinating clause, however, it is appropriate to include a comma. For example: After reading this Article, you probably want to drink a beer. The same applies for introductory words, such as "well," "now," and "first."[48]

When two words are a unit,
Put a hyphen to connect,
Always check the dictionary,
To ensure that hyphen is correct.

Hyphens connect two or more words that form a single unit. Hyphens also show structure, pronunciation, and eliminate ambiguity. For instance, take the word "recreation." This word can either be "recreation" or "re-creation." In terms of ambiguity, hyphens are helpful when used when a compound modifier precedes a noun.[49] The following are a few examples:

Lee has steel-blue eyes.

Lee has steel blue eyes.

In this example, Lee's eyes are not blue and made of steel. Lee's eyes are steel-blue in color. To avoid confusion, we hyphenate "steel" and "blue" to denote that they are one unit to describe Lee's beautiful eyes. Hyphens are not helpful when there is no ambiguity. For example: Kelli is a high school graduate. See, no ambiguity here. Other rules include: no hyphen in adverbs ending in –ly (unsightly dirty room), hyphenate words that are hyphenated pursuant to the dictionary, no hyphen in a compound using a comparative or superlative (better made boat, more likely outcome), and no hyphen in words starting with

48. Dana Driscoll & Allen Brizee, Purdue Univ., Commas After Introductions, Online Writing Lab, https://owl.english.purdue.edu/owl/resource/607/03/ (last edited Jan. 4, 2013).

49. Strunk & White, supra note 41, at 34–35.

common prefixes (nonexistent social life).[50] The following are a few examples:

> Law is a low-pressure career choice.
>
> While taking my final exam, I turned to DeeAnn with an I-want-to-kill-myself look on my face.
>
> I'm so glad I chose law school and will end up in debt instead of working at that real estate firm.
>
> During OCIs, I was never exhausted from engaging in all those face-to-face interviews with dozens of law firms.
>
> As a law student, Courtney's future is well-established.
>
> Lawyers are lucky because they can have round-the-clock fun.
>
> Justin loves contract law. He is doomed to be a forty-year-old cat man.
>
> Katie is eight years old, and she thinks boys have cooties. She is correct.

As you can see, some examples included hyphenating more than two words because all three words form a single concept preceding a noun. Also, some words were not hyphenated when they came after the noun.

Semicolons are lonely creatures of legal writing. Poor, underused semicolons, no one likes you because they do not know how to use you. Semicolons separate two independent clauses that are related. [51] Those independent clauses, as you know now, can stand on their own as separate sentences, but we do not want to do that because we want to show the relationship between the two clauses. Think of the two clauses as best friends; they want to sit next to each other in every class. In the clause following the semicolon, I am talking about the best friends

50. Id.
51. Id. at 5–6.

mentioned in the clause preceding the semicolon. As I stated above, you do not use a conjunction with semicolons. The exception to that rule is when you have a long sentence with multiple independent clauses that contain internal punctuation. For example: She has lived in San Antonio, Texas; Phoenix, Arizona; and San Francisco, California.

A single noun,
Always takes a single verb,
Don't break this rule,
Or the gods of grammar you will disturb.

Put the subject first,
And then put in the verb,
Next comes the object,
Now your sentence is superb.

Collective nouns,
Are one unit, not two,
They require singular pronouns,
The court is an 'it,' whatever you do.

'Neither' and 'either,'
'Anybody' or 'anyone,'
They all use 'he' or 'she,'
Before you can be done.

These concepts are relatively simple. A single noun, such as "the lawyer," uses a single verb, such as "studies." A plural noun, such as "the dental hygienists," uses a plural verb, such as "lounge."[52]

A proper sentence should take the following order: subject, verb, and object. For example: I eat cake. The farther the object is from the subject, the more confusing the sentence becomes. For example: I, a connoisseur of cakes and cream puffs, eat, often and with much pride, cake. Another example: Cake, being my favorite item of food, is what I eat.[53]

Collective nouns are nouns that describe a group. Some examples include family, band, court, jury, and board. The court is one entity

52. Id. at 9–10.
53. Richard C. Wydick, Plain English for Lawyers 41 (5th ed. 2005).

comprised of many judges. However, the court acts as one entity, and therefore the court is an "it" in terms of using a pronoun. For eample: The court stated in its holding that you should always use "it" when referring to the court. When the members of a group are all acting on their own, you use a plural pronoun. For example: The board discussed their opinions on the use of hyphenation. In this example, the board is a unit, but each member of the board is discussing his or her own opinion. Also, please notice that in that last sentence, I used a singular pronoun for "member." An individual is a "he or she," not a "they." For example: The student signed his or her social life away upon entering law school.[54]

A good rule of thumb with pronouns in legal writing is to avoid using them excessively. Instead of "he," "she," or "it," use the party's name or description, such as "the buyer." This helps to avoid confusion as to whom you are referring in your document.[55] Also, be on the lookout for any squinting modifiers in your writing. Squinting modifiers are words or phrases that are placed in between two words that could modify either one of those words. For example: Students who attend class frequently die of boredom. Here, this sentence could mean either that students who attend class every day will die of boredom or that students who attend class at all die of boredom because we do not know what "frequently" modifies. This is where pronouns or party names are useful because you need the reader to know exactly who and what you are talking about. To fix this problem, place the modifier next to the word it modifies.[56]

An em dash denotes emphasis,
Creating a strong pause,
But use it carefully,
And only for good cause.

Use an en dash,
For a page or a date span,
Keep all the digits or the last two,
But be as consistent as you can.

54. Garner, supra note 12, at 663.
55. See Garner, supra note 15, § 17, at 57.
56. Wydick, supra note 53, at 47–49.

A carefully placed em dash creates a contrast between two thoughts, emphasizing the second thought. Firstly, an em dash is the longest of the dashes. In the dash family, there is baby hyphen, middle brother en dash, and older brother em dash.[57] An em dash creates disruption, and good legal writers use them sparingly—with purpose—and not everywhere. As stated in the poem, an en dash is used for page spans and date spans. This is particularly helpful in citations and footnotes. For example: 1996–1997, not 1996-1997.[58]

Parallelism is another important concept in legal writing. Parallelism is used when expressing a series of items, concepts, phrases, or ideas. To avoid faulty parallelism, each word in the series should be structured the same grammatically. For example: The law student sat down, was banging his head on the table, and gave up studying. In that example, "sat down" and "banging" are not parallel because "sat" is in past tense while "banging" is in progressive tense. Instead, try: The law student sat down, banged his head on the table, and gave up studying. Often, faulty parallelism occurs in statutes and contracts when there are multiple commands or obligations. Parallelism helps long, complex sentences flow smoothly.[59]

For specific terms,
Capitalization is good,
Don't use it generally,
Or you'll be misunderstood.

For some reason, legal writers love to capitalize everything. We capitalize plaintiff, defendant, motion, court, and order even when we do not have to. To keep it simple, only capitalize a specific document to which you are referring. Do not say your client filed a Motion. Do say your client is responding to Defendant's Motion to Dismiss. In the first example, the motion refers to a general category of actions rather than a specific document. In the second example, the Defendant's Motion to Dismiss is a specific document that uses that naming convention rather than a general document.[60]

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57. Matthew Butterick, Typography for Lawyers 48–49 (2010) ("*Em* and *en* refer to units of typographic measurement, not to the letters M and N. In a traditional metal font, the em was the vertical distance from the top of a piece to the bottom. The en was half the size of the em.").

58. The Bluebook, supra note 31, R. 3.2(a), at 67.

59. Garner, supra note 15, § 8, at 33–34.

60. See Bryan A. Garner, The Redbook: A Manual on Legal Style § 2.6(a), at 64 (3d ed. 2013).

In terms of parties, only capitalize plaintiff, defendant, or court when you are referring to the parties or court in the case you are litigating. If you are merely citing a case or writing a case description, you should use lowercase letters.[61]

III. CITATION

As legal writers, we have a love-hate relationship with citation. On one hand, we love the way our pages look filled with footnotes and pretty small-caps letters. On the other hand, we hate having to stick those tiny numbers after every sentence. When used properly, citation directs the reader to additional helpful sources and promotes transparency and reliability in the author of the article and the assertions he or she makes throughout the article. As in all other aspects of legal writing, citations should be used with purpose.

Italicize those ids,
And the period too,
Do the same for case names,
Or you'll have more work to do.

Footnotes can be like rocks,
That fall inside your shoe,
They break readers' attention,
When they read what you want them to.

They supplement material,
That you talk about,
Don't use them to fill space,
Or your reader will check out.

I do not care what your law review says, footnotes do not need to fill all the white space allotted underneath that thick black line that runs across your page. However, that space should not be full of "ids" either. Legal scholarship should not regurgitate someone else's thoughts. If you have nothing original to say, then why write a fifty-page article in the first place? Also, if you have an entire paragraph that cites to the same source, just put a footnote at the end of the paragraph instead of a chain of "ids" that add nothing to your article. I am by no means saying

61. See id.

that footnotes are insignificant. On the contrary, thoughtful footnotes alert the reader to the source, show that the author attributed concepts to those who originated them, and offer additional information that supplements the text in the article. Lengthy explanatory footnotes detract from the article and break the reader's focus on the article.[62]

When it comes to citation, attribute to the source from which you borrowed, quoted, or used material in your research. A long list of string cites is not helpful to the reader, so you might want to think about including one primary source instead of a list of "see also" citations. If there is something worth explaining, do it in the body of your text instead of in the footnotes to ensure that your reader understands it in context.[63] I know this seems radical and will probably earn me a few head scratches, scathing looks, and choice curse words from law review editors, but that is their problem.

CONCLUSION

I hope you have benefited from my unorthodox approach to legal scholarship and legal writing. My goal throughout this Article was to present some issues encountered in legal writing in a creative, unique, and helpful way. Of course, I could have made this Article chock-full of "furthers," "moreovers," and "presupposes," but I think you have all had enough of that or can find that elsewhere if you are just craving it.

Before I part with you, I would like to impart two final pieces of advice for the young legal writers out there, especially law students. First, do as much writing as you can. The more you write, the better your writing will get. Yes, you will make mistakes, but through writing you will discover your own personal style, become more critical of your work, and become a better self-editor. Second, go back and read any feedback you have received from your professor, adviser, or superior on your written work. After reading it through and asking questions about any of those comments, implement that feedback by going back and reediting your work product. Even if you think you will never use that work product again or if you think it is a waste of time, do it anyway. Editing your work and going back and correcting the errors you made using the feedback you have received is a great way to understand how to make your writing better and to understand how those changes affect the quality of your work product.

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62. Joan Ames Maga, Bottomheavy: Legal Footnotes, 60 J. Legal Educ. 65, 84–87 (2010).

63. Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 125–27 (2008).

With this I now conclude,
I hope you're still awake,
Now you're a writing pro,
And it's a piece of cake!

Legal writing is not writing for old men in powdered wigs scratching their chins with feathered quills. Legal writing is, and should be, writing for the masses. Lawyers and law students: we know you are smart. We know you are $160,000 in debt because you devoted yourself to the hell that is law school, where you killed yourself over priorities in bankruptcy and the law of horizontal mergers. But your journey through that hell should not be taken out on everyone else in your poorly written, prepositional-phrase-filled, hereinafter-littered, hyphen-smocked, circular-heading-stocked writing.

But I digress. Legal writing, I submit, should be written in plain English; it should value brevity and demonstrate your command of the subject matter and English language; it should say what you mean once instead of saying the same thing in five different ways; and it should be fun, creative, and meaningful.