

Writin' Gooder: A Twenty-Four Step Program for Attorneys and Related Professionals

by Dr. John F. Sase

With Gerard J. Senick, Contributing Writer and Editor

“Too many attorneys and other professionals either do not take the time to ensure that their written documentation is correct or just have poor grammar and spelling skills. I was on the Moot Court Board in law school as an Issue Director. This meant that I was responsible for grading the briefs of second-year law school students. I could not believe the errors that I found in the work of students who at least had made it through four years of college. Also, I have felt strongly that law school does not prepare one for the practical everyday requirements of being an attorney, such as the writing of a complaint, discovery, etc. It is not part of the curriculum. If I had not been on Moot Court, I would have had very little experience with writing briefs.”

--Anita Szczepanski, Labor Attorney, Michigan Nurses Association, in a message to John F. Sase, 21 September 2011

Introduction

In last month's column, “The Endangered Art of Writing in the Fields of Law, Economics, and Related Professions,” we explored common errors that many writers—including attorneys, staff, and law students—make consistently. In turn, we showed our readers how to fix or avoid many of these mistakes. After sharing the article through my (Dr. Sase) LinkedIn network, I received a number of poignant responses similar in tenor to that of the opening quote. Apparently, the problems associated with writing in the legal profession go deeper than my collaborator Gerard J. Senick and I thought when we sat down to write last month's column. Therefore, we decided to do a follow-up piece based upon a classroom video that I produced featuring my longtime editor and friend Mr. Senick.

Over the years, I have practiced my profession as a teacher of Economics and a consultant to attorneys and others. In my professional capacity, I have read and graded papers written by upper-level undergraduate as well as graduate students. In addition to student papers, I have reviewed file cabinets worth of deposition transcripts, legal briefs, complaints, interrogatories, and other standard documents in the field of law. However, comments from attorneys whom I have served (like the one in this this month's opening quote) prompted me to develop these two columns about professional writing.

Throughout the legal community, writing stands as the trade of professionals. Content and style cannot be separated. As a result, poor writing causes more documents to fail in achieving their purpose than does hasty research or sloppy statistics. Remembering that ninety-five percent of cases settle before going to trial, we suggest that much of the credit for the success of the attorneys involved goes to well-written, persuasive documents.

Over the quarter-century that Mr. Senick and I have written together in the professional arena, we have noticed that many of the same foibles and errors in writing appear chronically in the documents that pass before our eyes. In addition, we have seen new writing gaffes. From our combined experience, we have isolated twenty-four major areas of concern and have been developing written and video material to address them. What follows is our “Twenty-Four Tips for Writers: Common Mistakes and How to Avoid or Fix Them.” Please feel free to use and share this article among your attorneys, staff, and colleagues.

1. Section Headings

Formal documents submitted to a court of law have sequential section headings that often are delineated with a combination of numerals and letters. Following this format, we must make sure that the series follows the standard practice of outlines. A common mistake occurs when the writer creates a section “II.A” with no section “II.B” following it. As with book and Web citations, headings assist readers in finding pertinent content.

2. Use Whole Sentences

Please use whole sentences instead of fragments. Fragments are for Texts or Tweets. Furthermore, some full sentences do not make sense. For example, “I will not be in my office” can befuddle a reader through lack of information. We can fix the sentence with a phrase to get “On Sunday, I will not be in my office.”

3. Vary Sentence Structure

How do accomplished writers vary sentence structure? They alternate declarative sentences with ones that contain introductory phrases. We could write a sentence such as “I am going to court.” In contrast, a sentence with an introductory phrase could read “During the weekend, court is not in session.”

In our documents, we suggest using two or three sentences of one type, then switching to the other. In rereading these documents we will be amazed at how lively they sound. As a result, our readers will not encounter sentence monotony. Declarative sentences, one after another, tend to bore readers. However, a document that only uses introductory phrases can have the same effect. Therefore, it is best to vary both types after two to three sentences.

4. Nonsensical Sentences

Take care that your sentences make sense. Let us take an example from the current economic crisis: “Banks began to lend money of housing through credit.” Yuk! Though the FBI may use this sentence as a flag to identify an Internet scam artist who wants to transfer \$15 million into our bank accounts, we must dismiss the sentence as incomplete and nonsensical.

5. Limit Quotations

Apart from rare exceptions, please limit both the number and length of quotes from authoritative books and articles. In a ten-page, double-spaced work, we should limit the quotes to a maximum of three or four. Furthermore, each of the quotes should not exceed one or two sentences. Beyond that, we should rely upon the art of paraphrase to convey ideas derived from another author. We saw the worst violation of this principle by a student who filled 80% of a term paper with one long quote. Just because a writer uses quotation marks does not absolve him or her from the crime of plagiarism.

6. Avoid Starting a Sentence with “To” or “And”

A professional document should not have a sentence that begins with the words “To” or “And.” Their use does not exhibit accomplished writing and degrades any formal paper. In order to avoid this error, please start a sentence with “In order to” instead of “To.” However, starting a sentence with “And” should be avoided altogether.

7. “Which” Versus “That”

Another point of confusion for many writers revolves around the use of “which” when they should use “that.” We use “that” when we have only one thing in question—the car that I am driving, the house that I bought, or the book that I read. In contrast, we employ “which” when referring to one of many. For instance, “This piece of evidence, which is one of many, has been submitted to the court.” Please note that “which” often appears in phrases and is preceded by a comma. Remember: we use the word “which” infrequently, if at all.

8. “Lose” and “Loose”

For some reason, the cross-substitution of the words “lose” and “loose” has grown rampantly in recent years. We have seen examples such as “This company will loose one million dollars.” In this case, we can only assume that the writer meant to use “lose” instead of “loose.” Therefore, we offer our readers this simple mnemonic device: If your belt is loose, you may lose your pants.

9. “It’s” Versus “Its”

Unfortunately, another widespread problem among writers who at least have earned a bachelor’s degree is the confusion surrounding “it’s” and “its.” Supposedly, the mix-up stems from our general use of an apostrophe “s” for possessive nouns. However, “it’s” represents one of our odder exceptions in our English language. In the case of “it’s,” the apostrophe in the contraction takes precedence over the possessive use. The contraction “it’s” means “it is.” Therefore by default, we use “its” as the possessive form.

10. Decades

When entering dates into a document, we can either write them as words or use the number form. For instance, the decade of “the nineteen-nineties” also may be expressed as “the 1990s.” Though the practice seems simple, we continuously see the error of writing a decade number with an apostrophe, e.g. the decade of “the 1990s” mistakenly appears as “the 1990’s.” The number represents neither a possessive form nor a contraction for “1990 is.” Remember: there is no apostrophe before the “s.”

11. Word Usage

Let us make sure that we maintain the correct usage of words within our documents. The past tense of “read” is not “red.” Last semester, we read a term paper written by a college senior that discussed economic issues involving “Heart” Plaza in Detroit. We imagine that such an error may cause Senator Phillip Hart at least to wince in his grave. Please take the time to do the research. Check a dictionary for the name or term or Google it.

12. Eloquent Variation

With the exception of specialized technical jargon and other terms with precise meaning in use, please avoid repeating a word in close proximity to its earlier appearance. However, many writers use the same common adjectives, nouns, and verb forms over and over again in their documents. Let us take the following sentence as an illustration: “This case is an important one in case law because it raises important issues.” In this example, the common word “case” has a very specific meaning in the field of law and should remain intact. However, appropriate synonyms for the adjective “important” include

“significant,” “weighty,” and “of great consequence.” We need to review our formal documents, look for repetition of words, and replace them when appropriate. Also, reading aloud helps to ferret out the repeats.

13. Split Infinitives

Another flub that writers often make involves the splitting of an infinitive. We recall that an infinitive appears as a verb with the word “to” at the front, such as “to write,” “to litigate,” or “to understand.” Splitting an infinitive entails separating the word “to” from its corresponding verb by the addition of words in between. For instance, adding the words “more fully” to the infinitive phrase “to understand the evidence” produces “to more fully understand the evidence.” However, the addition results in a split infinitive. We can fix the split by moving the words “more fully” to the end of the phrase and thus rejoin “to” and “understand.” Now, our reparation reads as “to understand the evidence more fully.”

14. Serial Commas

It is important to use commas properly, especially when presenting a series of words, terms, or short phrases. As a result, we refer to the commas as Serial Commas, ones that separate items in a series. For example, “I am taking a deposition in Chicago, next Monday, at 1:00 p.m.” Notice the three parts of the sentence separated from one another through the use of Serial Commas. Another example is “I will be going to court on Tuesday, Wednesday, and Thursday” not “...on Tuesday, Wednesday and Thursday.” Even though newspapers and magazines have been dropping the use of Serial Commas in recent years, the use of these commas in formal documents remains important.

15. Commas after an Introductory Phrase

Many writers fail to use a comma after the introductory phrase of a sentence. Consider the sentences “However, I will be off this afternoon” or “On Sunday, I will be with my family.” Both “However” and “On Sunday” constitute introductions. Whenever you have a word or phrase that leads into the main part of the sentence, please add a comma after the introductory word or phrase.

16. Unnecessary Commas

We have discussed the importance of placing commas where needed. Now, let us address the avoidance of unneeded commas. If only two elements appear in a sentence, they do not need comma between them. Let us consider the illustration “I am friends with Justice Holmes and his family.” Though many writers might put a comma after “Holmes,” the placement of “and” between the two elements suffices. No comma is needed.

17. Punctuation within Quote Marks and Outside of Parentheses

When quoting a person or other source, the end punctuation mark goes before the closing quote mark. For example, a witness may exclaim “Her husband beat her with a baseball bat!” Notice that the writer places the exclamation point in front of the closing quote mark, not outside of it. Conversely, end punctuation within parenthetical material generally belongs outside of the closing parenthesis. We usually see properly placed parenthetical material at the end of a longer sentence. Because the parenthetical material appears as a phrase, we place the period after the closing parenthesis, e.g. “The earnings of the plaintiff are documented by her tax filings and W-2 forms (as well as by the internal records of her employer).” An exception to the rule occurs when a full sentence appears within a pair of parentheses. In such a case, the period goes before the closing parenthesis.

18. Hyphenating Modifiers

Double words modifying a noun need to be hyphenated. For example, if we write “thirty year mortgages,” the reader may not know whether we mean a quantity of thirty one-year mortgages or one mortgage that extends for a period of thirty years. If we intend the second, we should hyphenate the modifying term “thirty-year” in order to clarify that a thirty-year mortgage lasts for three decades. In another current example, the term “mortgage-backed securities” would confuse even more people not living on Wall Street if the term “mortgage-backed” did not contain a hyphen.

19. Citing Interviews

If interviewing or deposing a client or witness, please put the full name of the person in the body of the document as well as on any reference sheet. In addition, please include the name, the title, and the date of the interview or deposition on the sheet.

20. Citing Authors of Source Material

When identifying authors of source material within the body of the text, please list their full names—first name, middle initial, and last name. When quoting someone, please make sure to identify from whom the quotation comes. Many writers insert a quotation followed only by a reference number. Unfortunately, this practice becomes a scavenger hunt: it forces the reader to turn to the reference sheet continuously in order to discover the identity of the person. One way to solve this problem is to begin the sentence with a phrase such as “Adam Smith and Henry Jones said” in order to lead into the quoted material. On the reference sheet insert the full names, the name of the publication and publisher, and the edition and publication date.

21. Uniform Resource Locator (URL) Citations

Our written language develops in step with advances in technology. As in book sources, we must give online citations in a complete form. Many authors only give the home-page URL, such as “www.saseassociates.com,” with no additional information. However, when we cite a deposition record, we give the full name, the date, the page, and, preferably, the line number in order to direct the reviewer to an exact location. We cite URLs in a similar manner. The reasoning behind the inclusion of any citation is to make it easy for the reader to find the precise location of the material and to know exactly what is included on the site. On the reference sheet, please put the name of the author(s), the title of the work, and the date of publication (or, if not available, the date on which we accessed the site).

If we want to lead our readers to the Portable Document Format (PDF) copy of this article, we should offer the more formal URL of “<http://saseassociates.com/legalnewscolumn.html>” and mention the location of the PDF download.

22. Identify Author Fully

When we refer to an individual writer or quote an interviewee in the body of the text, we must identify that person. At first mention, please give the full name of the person and add a descriptive phrase about him or her. We cannot assume that all of our readers will recognize the person solely by name. For instance, though most of us familiar with the field of law know the name Oliver Wendell Holmes, Jr., it may be best to add “past Associate Justice of the U.S. Supreme Court” when writing for a wider audience. This may save the casual reader from confusing the name of the Justice with that of the lawyer

character portrayed by Eddie Albert (Oliver Wendell Douglas) on *Green Acres*, the television comedy series of the 1960s.

23. Italicize Book Titles

Perhaps the most common error in formal documents comes from improper italicization of books, magazines, films, and similar titles. In addition, we often see the complementary problem of not placing the title of a published article within quotes. The basic rule states that we should italicize the title of any stand-alone publication or presentation such as the *New York Times*, *U.S. News and World Report*, and the *McNeil-Lehrer Report*. In contrast, we need to put any separate piece contained within a stand-alone work within quotation marks, as in the example “Perspectives, Mainly Scottish, on Evidence and Procedure in Witchcraft Trials” by Richard Ramsey in *Law and Magic: A Collection of Essays* compiled by Christine A. Corcos (Carolina Academic Press, 2010).

24. Sources for Writing

In concluding our list of twenty-four tips, we recommend three books to support our efforts to write well. The first one is *The Elements of Style* by William Strunck, Jr. and E.B. White (Longman, 4th ed., 1999, ISBN-10:020530902X). Dr. Strunck was a professor of English at Cornell University during the first half of the twentieth century. His student, E.B. White, also authored a number of well-known books for children, including *Charlotte’s Web* and *Stuart Little*. Their short volume concentrates on specific questions of usage and the cultivation of good writing, with the recommendation: “Make every word tell.” Even though it was originally published in 1919, *The Elements of Style* was placed on the list of the 100 Best and Most Influential Books Written in English since 1923 by *Time* magazine in 2011.

For the second, we suggest perusing the *Chicago Manual of Style* by the University of Chicago Press Staff (University of Chicago Press, 16th ed., 2010, ISBN-10: 0226104206). This tome has been published as a style guide for American English since 1906. Its current 1,026 pages represent one of the most widely used and respected style guides in the United States. Furthermore, writers and publishers consider it the *de facto* guide for American English style, grammar, and punctuation.

Finally, we recommend *Plain English for Lawyers* by Richard C. Wydick, professor of law at the University of California—Davis School of Law (Carolina Academic Press, 5th ed., 2005, ISBN-10: 1594601518). In honoring Wydick with its Golden Pen Award in 2005, The Legal Writing Institute endorsed his book, stating “Perhaps no single work has done more to improve the writing of lawyers and law students and to promote the modern trend toward a clear, plain style of legal writing” (lwionline.org).

Conclusion

In closing, we hope that the tips and recommendations listed above, a guide for developing the quality and effectiveness of legal writing, will help attorneys and their staffs to become better writers. Hopefully, our suggestions will aid professionals in improving the persuasiveness of their briefs, motions, and other documents and to increase their positive results. In turn, this will place the firms that implement these tools ahead of the competition. Producing high-quality documents more efficiently will lower the cost of doing business for a firm and will improve its chances for survival in this difficult economy. We hope that our readers will take this to “heart” and will start writin’ gooder!

Note: We have posted videos related to our monthly column on www.Youtube.com/SaseAssociates.

Current offerings in the *Legal News Features* playlist include: 1) *Hiring Forensic Experts*, 2) *Twenty-Four Tips for Writers*, and 3) *PowerPoint: Choosing the Color Palette*.

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