

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

by Dr. John F. Sase

With Gerard J. Senick, Contributing Writer and Editor

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

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

Prelude

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

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

Writing for a law review while in school brings the best student writers to the forefront. However, what about the others? Established attorneys should not have to take on the task of teaching the rudiments of professional writing to their staffs. However, given the investment made to recruit and hire new talent, an open dialogue with an appropriate take-away may benefit

entire offices. In the spirit of professional development within the larger legal community, which includes forensic experts and others as well as attorneys, we present this submission. Please feel free to copy and share it your office and/or classroom.

Introduction

Some attorneys and economists do not like criticism about their writing. However, many of us never rewrite our documents. This leads to problems. In contrast, professionals who write will grow and develop through negative as well as positive critiques. In addition, taking the opportunity to revise their works multiple times before submitting them will help to ensure the creation of more effective documents.

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

The Ground Rules

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

The first objective in writing any document is to Keep It Short and Simple. With practice, professionals in any field can trim their initial drafts by more than one-fourth. This means that the writer may need to start with fourteen or fifteen pages in order to draft a legal brief of ten. The process of writing resembles the work of baking, carving, and other crafts--focus, ability, and discipline must occur in order to achieve the desired quality.

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

Our Strange Language

Apart from a few Latin terms, the legal community does not communicate in the language of ancient Rome. The Modern English that we use currently has evolved from a diversity of languages. As a result, established rules of English grammar tend to be factual rather than logical, an issue that befuddles many professionals working internationally who use English as their second language. We might tell them that our rules for speaking and writing differ from one another. However, the rules come from observation in both cases. Once accustomed to the language, one finds it easier to spot poor writing and to determine where the work has strayed. If writers read the work of another, they will find that they can sense it as well. Experienced attorneys can articulate why a poorly written document sounds awkward and unprofessional.

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

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

Tools, Techniques, and Fluency

Before drafting any document for court, we must gather the tools that we need for this craft. These tools include a general outline, notes for revision, paper for scratching, and a word file that is open on the computer screen. Some in the legal arena prefer to write an initial draft using a pen and a pad that they can carry around. However, when writers commence with their edit, they need a good dictionary, such as a Merriam-Webster (<http://www.merriam-webster.com/>), and a thorough thesaurus like the one by Roget (<http://education.yahoo.com/reference/thesaurus/>). However, words are the primary tools of the work.

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

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

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

Writers achieve flow—literary fluency—through work, sweat, and grit. The path to fluency includes invention, arrangement, and style. Of the three, style may be the easiest to learn yet the hardest to perfect. However, for every one of us, style begins with fluency--getting our thoughts down on paper or into a computer. Style ends with our last rewrite, but when should we stop our revisions? After eliminating all of the muck from our writing, our revision should come to a climax when we reach an acceptable level of clarity and satisfaction.

Helpful Hints for Revision

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

In a large firm, the duty of copyediting may be spread among many people. In a small practice, it may fall to a single person. In respect to the techniques of revision relevant to those in the field of law and related professions, Amy Einsohn has prepared *The Copyeditor's Handbook: A Guide for Book Publishing and Corporate Communications* (University of California Press, 3rd ed., 2011). Einsohn presents a practical manual for revising professional papers to all who wish to further their knowledge and develop their skills. She explains the function of a copyeditor, what to look for in editing drafts, and how to develop sound editorial judgment. For example, Einsohn discusses the levels of copyediting, which include such aspects as the quality of the writing by the author, the intended audience, and the budget available.

Keep It Focused, Clear, and Interesting

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

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

In any written work, each paragraph should make a point. Most professional documents consist of some sort of an introduction, a development, and a summary/conclusion. A writer builds each section by assembling paragraphs that are not filler. A paragraph should discuss one topic that contains a single point. Often, a short paragraph that makes no point causes the reader to leap ahead. However, long paragraphs can cause as much trouble. Remember the old punch-line, “The best way to eat an elephant is one bite at a time.”

A Few Words on Presentation

If one picture, graph, or table is worth a thousand words, then attorneys and experts should endeavor to make them readable. The use of these kinds of word substitutes remains a part of writing. Therefore, the same rules apply. In using substitutes, writers need to keep their implied

readers in mind, present documents with clarity and brevity, and use such devices only as necessary.

One can find many excellent books on the subject of presentation. These include *Presentation Zen: Simple Ideas on Presentation Design and Delivery* by Garr Reynolds (New Riders, 2008), *Slide:ology: The Art and Science of Creating Great Presentations* by Nancy Duarte (O'Reilly Media, 2008), and *Beyond Bullet Points: Using Microsoft Office PowerPoint 2007 to Create Presentations that Inform, Motivate, and Inspire* by Cliff Atkinson (Microsoft Press, 2008). These authors point to the art of simplicity that allow readers to process and store most of the information that comes through their doors of perception. Though the foyer is large, the doorway is small. Only a limited amount of information can pass successfully through the short-term memory process and onward to long-term retention.

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

Coherency and Rhythm

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

Due to advertisements, popular songs, and electronic media, our culture has drifted into writing incomplete sentences. Most prominently, sentence fragments form most Texting and Twitter messages. Normal, fluent documents demand the use of full sentences—subject, verb, and object—not fragments.

In the war against monotony, the use of elegant variation continues to be debated. Pedantically repeating a narrow vocabulary tends to bore a reader. Through the use of synonyms, eloquent variation solves this problem. However in cases of rarified legal, economic, and other scientific terms, variation can confuse the reader. Be careful. Too much eloquent variation will impair the understanding of your intended meaning.

Reading Aloud

Before the invention of radio and television, family and friends would assemble at homes to whittle, relax, or sew while taking turns reading aloud books to the gathering. The written word was meant to be heard. Like music and poetry, accomplished writing has rhythm. By reading documents out loud to one another, the writers can hear the rhythmic beat. Does it sound

choppy? Is there monotony? Alternating a declarative sentence with others containing introductory phrases solves many problems through variation while allowing rhythm to form.

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

Punctuation can cause a kerfluffle because rules develop and change over time. Traditionally, the rules reflect old guidelines that were used by typesetters to maintain consistency. For instance, after a comma or semicolon, a writer should put one space. However, after a colon, the spaces may vary with one or two added, depending on usage. Punctuation goes within quotation marks but outside of parentheses. For more on this topic, we defer to *Chicago Manual of Style* (University of Chicago Press Staff, 16th ed., 2010) and to our video presentation *Twenty-Four Tips for Writers: Common Mistakes and How to Avoid or Fix Grammar, Writing, & Spelling Problems* by Gerard J. Senick (YouTube.com/SaseAssociates).

Fixing What Is Broken

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

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

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

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

The Department of Redundancy Department

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

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

Major Rules of Revision

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

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

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

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

Note: We are posting videos related to our monthly column on [Youtube.com/SaseAssociates](https://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*.

Dr. John F. Sase has taught Economics for three decades and has practiced Forensic Economics since 1997. He earned an M.A. in Economics and an MBA at the University of Detroit and a Ph.D. in Economics at Wayne State University. He is a graduate of the University of Detroit Jesuit High School. Dr. Sase can be reached at 248.569.5228 and by e-mail at drjohn@saseassociates.com. You can find some of his videos on Economics for Attorneys at www.youtube.com/saseassociates.

Gerard J. Senick is a freelance writer, editor, and musician. He earned his degree in English at the University of Detroit and was a Supervisory Editor at Gale Research Company (now Cengage) for over twenty years. Currently, he edits books for publication and gives seminars on writing and music. Mr. Senick can be reached at 313.342.4048 and by e-mail at gary@senick-editing.com. You can find some of his writing tips at www.youtube.com/senickediting.