

LEGAL WRITING STYLE

Third Edition

Antonio Gidi
Henry Weihofen

Hornbook Series

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LEGAL WRITING STYLE

Third Edition

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HORNBOOK SERIES®

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*To Isabella and Sophia,
Who taught me to read and write.*

*And to Ana Claudia,
Who teaches us everything else in between.*

Gidi

Preface

The first edition of this book was published in 1961, during the pre-history of modern legal writing. A pioneering work, well ahead of its time, it shaped the style of generations of lawyers and law students. A second edition, lightly updated, was published in 1980 at the dawn of the legal writing movement.

This sexagenarian classic, however, was left behind. It languished for decades, unfairly forgotten and badly out of shape. Although more than half was no longer useful, the core was timeless. It was destined to be discovered by someone with a passion for writing. I'm glad it was me. My research agenda was put on hold, and I dedicated myself to bringing Weihofen's vision back to life.

I originally thought the book would require only minor repairs to return it to a serviceable condition. Four years of research and more than 60 versions later, I'm honored to reintroduce Weihofen to the legal community, updated, developed, rewritten.

The book contains citations ranging from ancient Greek rhetoricians to 21st century writers; from English, German, and French stylists of previous centuries to contemporary American lawyers. Their insights show that many principles of good writing are independent of time, language, and culture. Let the masters inspire you to nurture your style.

This book addresses the key principles of writing, principles that have been debated for centuries. They are not immutable rules, but flexible, complementary, and conflicting guidelines that depend on context, objective, and, ultimately, your own taste and judgment. Take all these principles into consideration and you may write effectively; follow them blindly and your style will become formulaic.

The conscious writer will find here the tools to make strategic decisions about style. Instead of mechanical rules of thumb on writing well, you will find the intellectual framework needed to identify and produce superior prose. You will not only become a better writer, but will also grow to appreciate the reasons behind each principle.

As you cultivate an appreciation for style, you will learn to write deliberately instead of by accident. Only then can you exercise control over your message: you will say what you mean and mean what you say. Empowered by an understanding of the consequences of your stylistic choices, you will find your own voice.

Although short, this is not a leisure book for a carefree Sunday afternoon. But if you decide to take on the task of digesting it, you will become a more mature writer. It will change the way you think and write.

May this renewed edition of Weihofen's classic continue to guide generations of law students and professionals as they craft their own legal writing style.

GIDI

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I couldn't have completed this project without the support of my Research Assistants over the past four years. They were an invaluable source of inspiration. Kathryn Wisner was the first who believed in the project; Daniel Viau helped shape it; David Katz helped refine it; and Erika Simonson helped it cross the finish line.

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I also acknowledge the many students, practitioners, and scholars who trusted me with their writings over the past two decades. Their reactions to my suggestions helped me forge my own theories on legal writing style.

At the library, Christine Demetros patiently coped with my excitement as she helped me discover obscure sources. At the office, always with a kind smile, Helen Neville and Kristin Stewart bound dozens of versions through interminable rounds of revisions.

Some colleagues exceeded expectations, reading the entire manuscript and making thoughtful recommendations: Ian Gallacher, Geoffrey C. Hazard, Jr., Robert Ragazzo, Richard Risman, and Mary B. Trevor.

When I sent an early version to Geoffrey C. Hazard, Jr., he was 87 years old, in the last year of his life. Within a few weeks, he mailed me a bound copy with hundreds of handwritten suggestions that made my writing sharper, more modern, and more vigorous. Age and disease might have taken a toll on his body, but not on his mind. He was a superb legal stylist, a friend, and a mentor; he refined my thinking and my writing. I miss him profoundly.

Finally, I thank my family, without whom I would have had more time to write a better book. But then I'd have no one to tickle.

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Whenever examples are given side by side, the right-hand version or the one in parentheses is preferred.

Chapter 1

INTRODUCTION

There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground.

Fred Rodell (1907–1980)¹

For the lawyer, more than for other professionals, unless you can express your knowledge, you might as well have none.² The bricklayer, the surgeon, and the plumber do their work largely without words; they do not need to explain what they are doing to anyone or convince anyone that they are right.

Lawyers, however, are verbal creatures—words are their primary tools. Knowing the right answer is not enough; lawyers must explain their reasoning and persuade another lawyer, a judge, a jury, a client. Knowing and communicating are two different skills—a writer must bridge the gap between mind and paper through language.

Language, the greatest of humanity’s inventions, is the only means we have for communicating ideas. Language is the only means for having ideas in the first place—“The limits of my language,” said Ludwig Wittgenstein, “mean the limits of my world.”³ Herbert Spencer said something similar: “language must be regarded as a hindrance to thought, though the necessary instrument of it.”⁴ And Justice Robert Jackson intuitively reached the same conclusion, when facing a practical legal problem: “[p]eople do not have words to fit ideas that have never occurred to them.”⁵

Writing is a skill acquired only with practice; one is not born with it. Aristotle taught that “for the things we have to learn before

¹ Goodbye to Law Reviews, 23 Va. L. Rev. 38 (1936).

² Thucydides (460 BC–400 BC). See also Aristotle, Rhetoric, Book III, Part 1 (“it is not enough to know what we ought to say; we must also say it as we ought”).

³ Tractatus Logico-Philosophicus 5.6 (1921).

⁴ Philosophy of Style 11 (1915).

⁵ *Nw. Bands of Shoshone Indians v. United States*, 324 U.S. 335 (1945).

we can do them, we learn by doing them.”⁶ The pianist who plays Chopin flawlessly did not play Chopin the first time she sat down at the piano. The soccer team’s star player did not shine the first day he handled a ball. You acquire skill, whether in playing the piano, playing soccer, or writing, by disciplined, self-critical practice. If you wish to be a good writer, said Epictetus two thousand years ago, write.⁷ Bernard Shaw gave the same advice well over a century ago: you learn to write by making a fool of yourself until you learn how.⁸ And Anne Lamott recently told us yet again, “Almost all good writing begins with terrible first efforts. You need to start somewhere.”⁹

It is practice, then, that improves writing style. You learn by doing, not by reading advice on how to do it. A writing style manual can be helpful, just as a book on swimming can help you learn to swim. But the advice that you get from a writing style manual does not become meaningful until you put it into practice.

Style and substance are inseparable: style is the sculpture; substance, the clay.¹⁰ A book on writing does not teach tricks or mannerisms to ornament your style. Style, said E. B. White, is not “a garnish for the meat of prose, a sauce by which a dull dish is made palatable. . . . The approach to style is by way of plainness, simplicity, orderliness, sincerity.”¹¹

The style should reflect the subject matter, the document’s purpose, and the mood the writer wants to evoke in the reader. A lawyer might need to narrate facts, expound upon a legal principle, or argue a position. At one point, the mood the lawyer wants to convey will be one of calm impartiality, at another indignation or sympathy, stern justice or merciful pity. The writer does not begin by wondering what style to use. Instead, she asks, “What point am I trying to make? What do I want the reader to see, feel, or believe?”

If you know which effect you want to produce, a style will arise almost automatically. The words, the organization, and the rhythm of your prose will be those that most naturally express your attitude

⁶ Nicomachean Ethics, Book II, Ch. 1.

⁷ Epictetus (55 AD–135 AD), *The Discourses of Epictetus* 158 (1890).

⁸ *Collected Letters* (1874–1897) 465 (1965) (“You will never write a good book until you have written some bad ones . . . write a thousand words a day for the next five years.”).

⁹ *Bird by Bird: Some Instructions on Writing and Life* 25 (1994).

¹⁰ Gary Provost, *Make Your Words Work* 282 (2001).

¹¹ William Strunk, Jr. & E. B. White, *The Elements of Style* 69 (1979).

and mood. They will convey excitement or calmness, deliberateness or impatience, judicious equanimity or passionate conviction:

For ideally the style is the thought, freed from crudeness and incompleteness, and presented in its intrinsic power and beauty. And the writer's effort is not directed to achieving a style, but to satisfying the demands of his subject, in order to bring out in its fullness what is essentially there.¹²

The most powerful inspiration for true eloquence is a burning conviction. Light and heat, said Bernard Shaw, are the two vital qualities of literature.¹³ Whoever writes with rational light and emotive heat can be eloquent without the aid of rhetorical devices. This is why even those without literary polish, let alone perfect English, have been able to write artful prose. Famous anarchists Nicola Sacco and Bartolomeo Vanzetti were convicted of murder based on controversial evidence and executed in 1927. After being sentenced, Vanzetti wrote:

If it had not been for these things, I might have lived out my life talking at street corners to scolding men. I might have died, unmarked, unknown, a failure. Now we are not a failure. This is our career and our triumph. Never in our full life could we hope to do such work for tolerance, for justice for man's understanding of man as now we do by accident. Our words—our lives—our pains—nothing! The taking of our lives—lives of a good shoemaker and a poor fish-peddler—all! That last moment belongs to us—that agony is our triumph.¹⁴

The most persuasive writing is sincere writing—writing that most naturally reflects the personality, the spirit, and the feelings of the writer. As Buffon famously put it, “the style is the man himself.”¹⁵ Arthur Schopenhauer said much the same: “Style is the physiognomy of the mind, and a safer index to character than the face.”¹⁶ And for Voltaire, “writing is the painting of the voice.”¹⁷ You are your style and your style is you.

But what is a natural writing style? All writing is artificial in the sense that it is something one must learn (and legal writing is

¹² John Franklin Genung, *The Working Principles of Rhetoric* 19 (1900).

¹³ *Man and Superman: A Comedy and a Philosophy* xxxvi (1903).

¹⁴ Marion D. Frankfurter & Garner Jackson (eds.), *The Letters of Sacco and Vanzetti v* (1928) (as handwritten).

¹⁵ *Discours sur le style* [1753], in Lane Cooper (ed.), *The Art of the Writer* 153–54 (1952).

¹⁶ *On style* [1851], in Lane Cooper (ed.), *The Art of the Writer* 219 (1952).

¹⁷ *5 Philosophical Dictionary* 170 (1824).

more artificial than most). The student who reads good writing and tries to emulate good models is learning just as naturally as the one who follows poorer models, and the style she develops is as much her own.

How much is learned depends on the writer's conscious attention to the style of what she reads and how much effort she makes to emulate it. As P.D. James recommended, "Read widely and with discrimination. Bad writing is contagious."¹⁸ When you read something that strikes you as effectively written, stop. Analyze the rhythm, the sentence structure, and the choice of words to find out how the writer obtained this effect. Look to the advice in this book; learn to identify bad habits and cultivate good practices. In time, you will develop your own natural way of writing.

The Fowlers' advice is timeless:

Anyone who wishes to become a good writer should endeavor, before he allows himself to be tempted by the more showy qualities, to be direct, simple, brief, vigorous, and lucid.

This general principle may be translated into practical rules in the domain of vocabulary as follows:

Prefer the familiar word to the far-fetched.

Prefer the concrete word to the abstract.

Prefer the single word to the circumlocution.

Prefer the short word to the long.

Prefer the Saxon word to the Romance.¹⁹

These principles summarize most of the advice in this book. We rearranged them into four objectives: be precise, concise, simple, and clear. The objectives overlap considerably, and sometimes contradict each other. Precision, for example, is in constant tension with concision, simplicity, and clarity; clarity and concision do not always go hand in hand either. Careful writers, however, are able to strike a balance among them.

The following four chapters include suggestions on how to achieve each of these qualities using elements of style including

¹⁸ The Guardian, Feb 19, 2010.

¹⁹ H.W. Fowler & F.G. Fowler, *The King's English* 1 (1908). See also Herbert Spencer, *The Philosophy of Style* (1884).

diction, phrasing, and sentence structure. We deal with them separately, not because they are independent, but because it is more orderly to focus upon each in turn, even though they often shade into one another.

Legal writing is intended to convince. Even “objective” and “predictive” writing carries an element of persuasion: you must convince the reader that your objective assessment is correct or that your prediction is sound. Persuasion results not only from the intrinsic merit of the argument, but also from how the message is conveyed. The chapter on forcefulness discusses how to make arguments more vivid and vigorous. The chapter on organization suggests improvements on the structure of sentences and paragraphs and on the orderly presentation of argument. The last chapter offers a touch of eloquence.

But before we get to any of these objectives, Aristotle’s cardinal admonition must be emphasized: consider the audience.²⁰

Effective writing is reader-centered. Good writers have “intellectual sympathy,” a feeling for the reader’s mental state, enabling them to adjust the phraseology and sequence of ideas to meet the reader’s needs.²¹ Put yourself in the reader’s place and make a concerted effort to preempt doubts about meaning and to avoid verbosity, which slows and tires the reader. The central principle of writing, according to Herbert Spencer, is economy: you must present your ideas in a way that will spare the reader’s attention, so the reader may apprehend them with the least possible mental effort.²²

The ideal style is one that the reader will notice the least. “The greatest possible mint of style,” said Nathaniel Hawthorne, “is to make the words absolutely disappear into the thought.”²³ This aphorism is particularly apt for legal writing, which is read by busy people who cannot spend time admiring its artistry. Readers are best served by writing that allows them to grasp the substance without noticing its form. A noticeable style is not a good style. Even if it does not mislead or confuse the reader, it calls attention to itself and away from the message.

²⁰ The Art of Rhetoric.

²¹ Herbert Spencer, 2 *An Autobiography* 512 (1904).

²² *Philosophy of Style: An Essay* 11 (1915).

²³ See Mark van Doren, *Nathaniel Hawthorne* 267 (1949).

If the judge reading your brief is impressed solely with how well you write, you have defeated yourself—make the judge feel that your client has a good case, not a good writer. When friends told Cicero that he was the greatest orator, he replied: “Not so, for when I give an oration in the Forum people say, ‘How well he speaks!’ but when Demosthenes addressed the people they rose and shouted, ‘Come, let us up and fight the Macedonians!’”²⁴

You never merely write. You always write to someone; you write with a purpose. Part of knowing how and what to write is determining to whom you write. Once you know your audience, write to that person as you would want that person to write to you.²⁵ Improve the golden rule by writing to that person as that person would want to be written to. Even a novelist or a journalist does not write for everyone. An article for *The New Yorker* is written in a distinctly different style from one for *Sports Illustrated*, not only because the topics are different but also because the readers are different.

The lawyer, of all writers, has the easiest task when it comes to identifying her readers. Usually, she is writing for an audience of one—one client, one lawyer, one judge. In fact, the lawyer knows her readers much better than most other writers and has some idea of what appeals to them. The lawyer may know something of their tastes and interests; their political, social, and economic points of view; their hobbies; and the public figures they respect. A lawyer must keep a mental picture of the person being addressed and measure every statement against the effect it will have on that person. Even when a lawyer does not know her reader, the audience of a legal text is significantly more uniform than that of most other forms of writing.

Sometimes the lawyer’s audience is not a legal professional. A letter to a doctor has a different audience than the one addressed to a person with limited education and should be written accordingly. Language appropriate for a corporate mortgage is not appropriate for addressing a jury. A contract, although usually written for only two lay people, must be drafted with a further audience in mind—lawyers and ultimately judges who may have to interpret it. Because it is difficult to develop a variety of styles, a lawyer may mistakenly write a letter to a client as though drafting

²⁴ See Mervyn James Curl, *Expository Writing* 12 (1919).

²⁵ Joseph M. Williams & Joseph Bizup, *Style: Lessons in Clarity and Grace* 177 (2017); Robert Gunning, *The Technique of Clear Writing* 4 (1973).

a legal instrument or compose a brief as though arguing orally in court. The lawyer who uses one kind of writing style when another is more appropriate is likely to write poorly.

Rigorous writing is excellent training in rigorous thinking. “Thought and speech are inseparable from each other,” said John Henry Newman. “Matter and expression are parts of one: style is a thinking out into language.”²⁶ To write properly, one must think properly. Writing, said Justice Roger J. Traynor, is “thinking at its hardest.”²⁷

Consistent concern for form naturally leads to improved substance. The lawyer who strives to be precise and clear may discover the need to think through a point more thoroughly before he can express a thought unambiguously. A text written with fuzzy words was probably the result of fuzzy thought. Trying to write with clarity helps the writer perceive that he lacks a clear understanding of the subject, and so spurs him to master the content more thoroughly.

Language and thought—style and substance—are so closely interconnected that it is impossible to dissociate one from the other, as it is impossible to dissociate an author from his or her style.

²⁶ The Idea of a University 276 (1852).

²⁷ Some Open Questions on the Work of State Appellate Courts, 24 U. Chi. L. Rev. 211, 218 (1957). See also William Zinsser, *On Writing Well* 147 (2006) (“Writing is thinking on paper. Anyone who thinks clearly can write clearly”); Robert Gunning, *The Technique of Clear Writing* 11 (1973).

Chapter 2

PRECISION

Words are the source of misunderstandings.

Antoine de Saint-Exupéry
(1900–1944)²⁸

*You can always write and erase
and do it over.*

Toni Morrison²⁹

§ 2.1 Introduction

On your own, you do not have to write with precision. It is your prerogative to write any way you want and blame the reader who fails to understand your meaning. But you do not have that freedom when you represent a client's interest.

The lawyer must write more precisely than almost anyone else. Most writers can expect their work to be read in good faith, with an honest desire to understand what was intended. But the lawyer must write constantly aware of a hostile reader: the party who wants the contract to have contradictions or loopholes; the disappointed heir who wants the will read to defeat the testator's intention; the criminal defendant who wants the statute interpreted so as not to cover a certain act; and all the others who want to twist the meaning of words for their own ends.

Not every legal document will be attacked. If all goes well, no question will ever arise. But lawyers never know which of their efforts will someday be the subject of disagreement. Therefore, they must take pains to say precisely what they mean—no more and no less—not only so that a person reading in good faith can understand, but also so that a person reading in bad faith cannot misunderstand.³⁰

²⁸ Le Petit Prince 80 (1943).

²⁹ Toni Morrison: Write, Erase, Do it over, <https://alanrinzler.com/2015/03/toni-morrison-write-erase-do-it-over>.

³⁰ See Quintillian (35 AD–100 AD), Institutes of Oratory § 8.2.24 (95); *In re Castioni*, 1 QB 149, 167–68 (1891).

Chapter 3

CONCISENESS

Brevity is the soul of wit.
Shakespeare (1564–1616)¹

Less is more.
Robert Browning (1812–1889)²

§ 3.1 Introduction

If the first aim in writing is to communicate with accuracy, the second is to do it with dispatch. Conciseness is particularly important for lawyers, who, more than most writers, must say exactly what they mean, no more and no less. Every additional word is one more potential source of ambiguity, error, or conflict.

“Lawyers are wordy,” wrote David Mellinkoff, “it takes them a long time to get to the point.”³ Indeed, “[t]he one thing about legal writing that everyone agrees on is that there is too much of it. Everyone complains of everyone else’s verbosity.”⁴

Lawyers write for busy professionals. Picturing the judge reading your brief late at night may inspire you to make your point in the fewest words possible. And you will not only spare the reader’s time and energy, but also increase your material’s vitality. Consider Chief Justice Roberts’s reaction: “I have yet to put down a brief and say, ‘I wish that had been longer’. . . . Almost every brief I’ve read could be shorter.”⁵

Almost every scholar who has addressed writing style has had strong opinions on concision—ironically, it’s the most discussed topic. “[T]he aim,” said Herbert Spencer, “must be to convey the greatest quantity of thoughts with the smallest quantity of words.”⁶ “Every word that can be spared,” said Arthur Schopenhauer, “is

¹ Hamlet (1602).

² Andrea Del Sarto (1855).

³ The Language of the Law 24 (1963).

⁴ Legal Writing: Sense and nonsense 126 (1982).

⁵ Interview with Bryan A. Garner, 13 Scribes J. Leg. Writing 5, 35 (2010).

⁶ The Philosophy of Style [1852], in Lane Cooper (ed.), The Art of the Writer 260 (1952).

Chapter 4

SIMPLICITY

Make everything as simple as possible, but not simpler.

Albert Einstein (1879–1955)¹

§ 4.1 Introduction

The main objective in writing is to make yourself understood.² Simple, everyday words are more likely to convey meaning than unusual and pretentious ones, and more likely to sound sincere. “If [people] would only say what they have to say in plain terms,” quipped Samuel Taylor Coleridge, “how much more eloquent they would be!”³ Plato knew that as well: “beauty of style and harmony and grace and good rhythm depend on simplicity.”⁴

Even in poetry, where readers expect luxuriant verbiage, poignant emotion can be evoked with simplicity. A. E. Housman saluted soldiers who died in war almost wholly in one-syllable words:

Here dead we lie / Because we did not choose
To live and shame the land / From which we sprung.
Life, to be sure, / Is nothing much to lose,
But young men think it is, / And we were young.⁵

“It is quite possible,” said Arthur Schopenhauer, “to be at once simple and sublime.”⁶ “[E]very really great writer tries to express his thoughts as purely, clearly, definitely, and shortly as possible. Simplicity has always been held to be a mark of truth; it is also a mark of genius.”⁷

¹ This famous Einstein quote may be a paraphrase of a more complex statement. See *On the Method of Theoretical Physics* 10 (1933) (“it can scarcely be denied that the supreme goal of all theory is to make the irreducible basic elements as simple and as few as possible without having to surrender the adequate representation of a single datum of experience.”). See Alice Calaprice, *The Ultimate Quotable Einstein* 384–85 (2011).

² John Dryden, *Preface to Fables, Ancient and Modern* (1700).

³ *On Style* [1810], in Lane Cooper (ed.), *The Art of the Writer* 180 (1952).

⁴ *The Republic*, Book III.

⁵ *More Poems*, XXXVI, in *The Collected Poems of A. E. Housman* (1940).

⁶ *On style* [1851], in Lane Cooper (ed.), *The Art of the Writer* 229 (1952).

⁷ *Id.* at 223.

Chapter 5

CLARITY

[T]he virtue of style is to be clear.
Aristotle (384 BC–322 BC)¹

*Have something to say, and say it
as clearly as you can. That is the only
secret of style.*

Matthew Arnold (1822–1888)²

*War is what happens when
language fails.*

Margaret Atwood³

*If it's slovenly written, then it's
hard to read.*

Maya Angelou (1928–2014)⁴

§ 5.1 Introduction

“Most of the disputes in the world,” said Lord Mansfield, “arise from words.”⁵ Words are, indeed, the source of misunderstandings.⁶

“The trouble with ambiguity,” said Monroe C. Beardsley, “is that it may disrupt communication without either party knowing that communication has been broken down.”⁷ Frequently, they only realize when it’s too late.

Ambiguous language is responsible for innumerable lawsuits. In conducting those lawsuits, lawyers often write briefs containing

¹ On Rhetoric. A Theory of Civic Discourse 221 (transl. George A. Kennedy 1991).

² As quoted in George William Erskine Russell, Collections and Recollections 136 (1898) (“People think I can teach them a style. What stuff it all is! Have something to say, and say it as clearly as you can. That is the only secret of style”). Arthur Schopenhauer had said something similar 35 years before, but it was Arnold’s quote that became famous in the United States. Schopenhauer said, “The first rule . . . for a good style is that the author should have something to say; nay, this is in itself almost all that is necessary.” On style [1851], in Lane Cooper (ed.), The Art of the Writer 223 (1952).

³ The Robber Bride 43 (1993).

⁴ Maya Angelou: How I Write, The Daily Beast, April 10, 2013.

⁵ Morgan v. Jones, 98 Eng. Rep. 587, 596 (1773). This idea was explored in John Locke, An Essay Concerning Human Understanding c. 9,10,11 (1690).

⁶ Antoine de Saint-Exupéry, Le Petit Prince 80 (1943).

⁷ Thinking Straight 163 (1956).

Chapter 6

FORCEFULNESS

A well-constructed sentence should be able to carry a stress on any of its words and should show in itself how these stresses are to be compounded.

William Empson (1906–1984)¹

§ 6.1 Introduction

The subject of most legal writing is complex and demands a reader's concentrated attention. But readers tire and stop paying attention. Writing thus becomes a psychological campaign, an exercise in holding the reader's interest. The writer must continually spur the reader on, now tickling his fancy with a neat turn of phrase, now stirring or shocking him with a moving or vivid word, constantly stimulating him to think more keenly, see more clearly, or feel more strongly. A vigorous style is particularly important for lawyers, who need to make the impact on the reader strong and indelible.

Before considering how forcefulness can be attained, let's make clear how it cannot.

I. HOW NOT TO DO IT

§ 6.2 Avoid Ineffective Techniques to Emphasize

In speaking, we can use devices to gain forcefulness that are not available in writing, such as pauses, gestures, and raising or lowering the voice.

Thoughtless writers, deceived by the abundance of tools in modern word processors, abuse typographic techniques, such as highlighting words, phrases, even whole sentences. But force is not conveyed by mechanical gimmickry such as underlining, bold, capital letters, or italics. This is bad writing, a practice that is artless and usually ineffective. Instead, forceful writing results from nuanced word choice, sentence structure, and organization. You may use typographic techniques in early drafts to call attention

¹ Seven Types of Ambiguity 34 (1955). See also John Franklin Genung, *The Working Principles of Rhetoric* 129 (1900).

Chapter 7

ORGANIZATION

*Proper words in proper places
make the true definition of a style.*

Jonathan Swift (1667–1745)¹

§ 7.1 Introduction

Some aspects of your writing may improve after you are in practice. Your vocabulary may increase and you may develop tactful ways to say what you mean without unnecessary bluntness. But a logical mind is the product of rigorous training.

§ 7.2 Master Your Subject

Just as water cannot rise above its source, so you cannot write more clearly than you think. “Thought and speech,” said John Henry Newman, “are inseparable from each other. Matter and expression are parts of one: style is a thinking out into language.”² That is why Arthur Schopenhauer said that “the first rule . . . for a good style is that the author should have something to say; nay, this is in itself almost all that is necessary.”³

Ambiguity caused by muddled thinking can be avoided by knowing the topic well, by learning to think straight, and by taking time to think carefully. Painstaking care in thinking through what you want to say and how to say it will help you avoid blurry writing, and will lead to clarity, conciseness, and vigor.⁴ Most symptoms of writer’s block result from poor research, poor organization, and poor planning.

Liberate yourself from the delusion that ideas will come and fall in place if you just start writing. To write clearly you must have gathered your material and arranged it in some sort of order; you must also have thought through the relationship of one part to others, evaluated their relative importance, decided which one or

¹ A Letter to a Young Clergyman [1721], in Lane Cooper (ed.), *The Art of the Writer* 138 (1952).

² *The Idea of a University* 276 (1852).

³ On style [1851], in Lane Cooper (ed.), *The Art of the Writer* 223 (1952).

⁴ See § 5.2, *Think About What You Are Saying*. Imprecision and ambiguity are further discussed on Chapters 2, *Precision* and 5, *Clarity*.

Chapter 8

A TOUCH OF ELOQUENCE

The well-written works are the only ones that will go down to posterity: the amount of knowledge in a book, the peculiarity of the facts, the novelty even of the discoveries, are not sure warrants of immortality. If the works . . . are written without taste, without nobility, without inspiration, they will perish; since the knowledge, facts, and discoveries, being easily detached, are passed on to others, and even gain intrinsically when appropriated by more gifted hands.

Buffon (1707–1788)¹

Nearly always the things a writer says are less striking than the way he puts them; for men in general have much the same ideas. . . . It is the expression, the style, that makes all the difference. . . . True style gives individuality to the commonest things, strength to the feeblest, dignity to the simplest.

Voltaire (1694–1778)²

§ 8.1 Introduction

Precision, conciseness, simplicity, clarity, forcefulness, and organization, discussed in previous chapters, are the essential qualities of style—for a lawyer even more than for most writers. Generally, the lawyer must avoid the more literary qualities of eloquence or ornamentation. But occasions will arise when a lawyer will want more than cold clarity or logic, and should be able to express an idea with grace and elegance.

The qualities that make for grace, polish, and effectiveness of expression are not easily identified. No one knows why certain combinations of words move us more strongly than others.

¹ Discours sur le Style [1753], in Lane Cooper (ed.), *The Art of the Writer* 153 (1952).

² Style [1771–1774], in Lane Cooper (ed.), *The Art of the Writer* 160 (1952).

Chapter 9

CONCLUSION

What is written without effort is in general read without pleasure.

Samuel Johnson (1709–1784)¹

Fine writing is generally the effect of spontaneous thoughts and a labored style.

William Shenstone (1714–1763)²

But easy writing's vile hard reading.

Richard Brinsley Sheridan (1751–1816)³

A hasty, careless, bad style shows an outrageous lack of regard for the reader, who then rightly punishes it by refusing to read the book.

Arthur Schopenhauer (1788–1860)⁴

One arrives at style only with atrocious effort, with fanatical and devoted stubbornness.

Gustave Flaubert (1821–1880)⁵

Easy reading is damn hard writing.

Maya Angelou (1928—2014)⁶

If you believe in the value of your thoughts, you must exert great effort to express them articulately. The journey toward ideal expression starts here, and never ends. But you will find that each step is its own reward.

This book has displayed a compilation of common stylistic blunders. Do not assume, however, that lawyers' writing is worse than that of most people. All writers are tempted at times to indulge in pompous or pretentious words. Others also fail to think through

¹ See William Seward, *Biographiana* 260 (1799). But see <http://quoteinvestigator.com/2014/11/08/without-effort/>.

² On Writing and Books, in *1 Essays of British Essayists* 315 (1900).

³ *The Rival Beauties* 16 (1772). See <http://quoteinvestigator.com/2014/11/04/easy-writing/#note-10041-1>.

⁴ On style [1851], in Lane Cooper (ed.), *The Art of the Writer* 232 (1952).

⁵ *Pensées de Gustave Flaubert* 15 (1915).

⁶ Maya Angelou: How I Write, *The Daily Beast*, April 10, 2013.

exactly what they want to say before they say it, neglect to read critically, and fail to revise their writing.

Most lawyers, like most government officials, “write grammatically correct English. . . . Sometimes it is very good, but then no one notices it. Occasionally it reaches a level of rare excellence.”⁷

The bad practices denounced in this book are not characteristic of most lawyers’ writing. Anyone who habitually commits every error in the book is a poor prospect for the profession. You should concentrate on correcting those you commit. Some can be avoided before they are written. When about to begin a sentence with *it is* or *there is*, remember that this is a weak start and find a stronger opening; when *very* comes to mind, recall that this word is almost never a help.

But no one should expect to attain perfection in the first draft—the key to good writing is rewriting. When you reread your early drafts for style, you will find intensifying adverbs you put there to add force that now sound exaggerated. You will find weak nouns qualified by one or more adjectives; if you think, or consult a thesaurus, you will find a single noun that will do the job by itself, and do it more pungently. You will find loose, unharnessed sentences that you can rearrange and tighten.

When you think you have a passable draft, read it aloud. Or have a friend read it to you. As you listen, you will hear passages that sound flat or awkward. If the reader’s voice falters, if he stresses the wrong word, if the rhythm breaks, then the passage needs reworking. Perhaps it needs to be thrown away, in favor of a fresh start.

Finally, with hard work and perhaps a little luck, you succeed in erasing all the evidence of your sweat and toil. You have a paragraph that sounds easy and natural. For that is the aim of all the labor—to make it sound unlabored. “A picture is finished,” said James Whistler, “when all trace of the means used to bring about the end has disappeared.”⁸

If you succeed, you will have the gratifying feeling that the words you have used and their arrangement hit just the right note to produce the effect you want. As you reread your work, phrases,

⁷ Ernest Gowers, *Plain Words: Their ABC* 291–92 (1957).

⁸ *The Gentle Art of Making Enemies* 115 (1890).

sentences, whole paragraphs ring pleasingly in your mind and in your ear. “This is good!” you will say, a little surprised and more than a little pleased. That is your reward: the sense of satisfaction with a job well done, the ultimate reward of any creator.

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