



Write Now: Writing Strategies that Instantly Elevate Your Writing

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Good legal writing does not sound as though it was written by a lawyer.

Good legal writing, in general, is writing that **keeps the readers' interests foremost.**

Most lawyers and judges read almost exclusively on a computer screen. So we must:

- Summarize
- Give bearings
- Cut the clutter

Anything that sets the reader to skimming or skipping must go.

The "F-Pattern"

The heatmap shows high engagement (red and yellow) in the top-left corner, specifically on the navigation menu and the main content area. The engagement follows an 'F' shape, with a vertical bar on the left and a horizontal bar across the top. The rest of the page, including the right sidebar and footer, shows significantly lower engagement (blue).

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Screen Reading

Legal readers are now “skimming” more than we’re “studying.”

Screen reading is literally changing how we read documents including appellate briefs.

Three Guiding Principles

- Speak Human
- Lead From the Top
- Guide Your Readers

Plain English

If you would not use a word or phrase when speaking with a colleague, don't use it in your writing.

Speak human.

Avoid Stuffy Language

Not this: Pursuant to our conversation. . . .

But this: As we discussed. . . .

Not this: Subsequent to. . . .

But this: After. . . .

Avoid Stuffy Language

Not this: With respect to, With regard to,
Regarding, Concerning

But this: On, About, For, As for

Avoid Stuffy Language

Not this: Therefore, Consequently, or
Accordingly

But this: So, Thus, or Then

Avoid Legal Clichés

Not this: In the instant case. . . .

But this: Here,

Or this: The jury, here,

Not this: Assuming *arguendo*

But this: Even if

Which One Is Better?

But v. However

And v. Furthermore

So v. Consequently

Under v. Pursuant to

Lead From the Top

If you **tell** your audience what's important, they'll look for that information as they read.

When you present that information later, they'll seize on it and it will “**click**” quickly, like a puzzle piece snapping into place.

Lead From the Top

- **Lead** a brief with your conclusion
- **Lead** a section with a substantive heading
- **Lead** a paragraph with a summary sentence
- **Lead** an email with a strong subject line

Lead From the Top

Your leads all function as **transitions**.

And they **prime** your readers about what to look for.

Guide Your Readers

Sane people don't read briefs for pleasure.

They read briefs because they're expected to.

In fact, they don't "read" them so much as they "use" them.

Guide Your Readers

They want to know what to do next and your job is to tell them.

What are you asking the court to do?
How can the judges and clerks get there?

Sharpening Our Knives

- Introduction
- Issue Statements
- Facts
- Argument



Introductions

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Grab the Readers'
Attention

Hello

Narrative Nonfiction

In 1995, a group of men burst into a house, ordered the occupants to lie down on the floor, and opened fire; five people were killed.

Petitioner was **the only person brought to trial.**

He was tried in Orleans Parish, Louisiana, a jurisdiction whose district attorney's office has a **long and disturbing history of failing to produce exculpatory evidence to criminal defendants.**

Simple Hook

Both the district court and the court of appeals held that the equal protection component of the Fifth Amendment's due process clause was violated when the federal government imposed \$363,053 in estate taxes on the estate of Thea Spyer **simply because she was married to a woman** (respondent Edith S. Windsor), **instead of a man.**

Emotional Stakes

After unceremoniously renouncing his parental rights to his unborn daughter—Baby Girl—in a **text message** and making no effort to see Baby Girl for months after she was born, Father stepped in **at the eleventh hour** to block an adoption that was lawful and in the “best interests” of Baby Girl.

Vivid Words & Images

Oklahoma intends to execute petitioners by injecting them with large amounts of a paralytic drug and potassium chloride. The paralytic drug **produces a chemical entombment, paralyzing and eventually suffocating the person.** Potassium chloride feels like **liquid fire as it courses through the veins;** it eventually stops the heart. Throughout this process, the paralytic drug **ensures that observers see no evidence of suffering, because the prisoner will be completely paralyzed.**



Think Like a Screenwriter

- Grab the reader from the get-go.
- Convey your theme—in a few sentences—at the outset.
- Weave that theme throughout your brief.
- Once you grab the reader, do not let go.

Deep Issue Statements

Consider framing your issue statements in **multiple sentences** (premise-premise-question) stated simply in **75 words or less**.

The idea is to get your point across in **90 seconds or less**.

Sample Deep Issue Statement

Under Louisiana law, a husband is presumed to be the father of his wife's child and must support the child unless he denies paternity within one year of the child's birth. Rousseve did not deny paternity until five years after Aleigha's birth. Was he obligated to support Aleigha until he proved that he was not her father?

Deep Issue Statement

Improves upon the traditional one-sentence issue statement in two ways:

- (1) it's easier to read and follow because it **presents the key context** before asking the question, and it divides a long-winded single sentence into a few shorter sentences; and
- (2) it's more persuasive because it **gives a bit more freedom** presenting the law and facts, and it **contains a syllogism** that strongly suggests the desired answer.

Let Your Facts Show, Not Tell



The facts in the brief should read like **narrative nonfiction**, a bit like something you would read in *The Atlantic* or *The New Yorker*.

Show, Not Tell



Although Baker died before the significance of his observations became known, **his faithful traveling companion—an Irish Setter who often flew shotgun**—was immortalized by a geologist who dubbed the creek Baker had spotted “Red Dog” Creek.

Let Choice Details Speak for Themselves



Why mention an Irish Setter?

What does a shotgun-flying dog have to do with the Clean Air Act or administrative law?

Draft Facts That Speak for Themselves



John Roberts is litigating a classic federalism fight between the states and the federal government.

So he “shows” you why the Red Dog Mine plays a vital economic role without “telling” you what to think.

Show, Not Tell



Operating 365 days a year, 24 hours a day, the Red Dog Mine is the largest private employer in the Northwest Arctic Borough, an area roughly the size of the State of Indiana with a population of about 7,000. . . .

Cut the Clutter

The easiest way to improve a fact or background statement is to prune it.

Cut Dates; Convey Time

Replace dates with phrases that convey a sense of time:

- “Shortly after”
- “Some months before”

Cut the Clutter

What works for background facts also works for procedural history.

Cut the Clutter

Avoid “in its response to the Motion” and other long procedural descriptors.

Favor “**responds**”

Cut the Clutter

Cutting clutter isn't just about saving words.

It's also about **turning down the noise so the signal shines through.**

So, trim fat, clutter, and other distractions from your prose.



Using Document Design and Structure to Hold Your Readers' Attention

Trend in Brief Writing



Sounding less like a lawyer in documents designed to be more readable.

Document Design: Butterick's Chart of Fonts Graded from A-F

A List:

Book Antigua
Garamond

B List:

Calibri
Century
Constantia
Corbel
Segoe UI

Document Design: Butterick's Chart of Fonts Graded from A-F

C List:

Cambria
Century Gothic
Consolas
Courier New
Georgia
Lucidia Console

F List:

Arial
Bradley Hand Itc
Bookman Old Style
Comic Sans
Freestyle Script
French Script

Document Design: Butterick's Chart of Fonts Graded from A-F

C List:

Lucidia
Lucidia Console
Lucidia Sans Unicode
Plantagenet Cherokee
Georgia

F List:

Gabriola
Mistral
Papyrus
Tempus Sans ITC
Trebucket ITC
Verdana

Garner's Advice on Formatting Headings



Main heading in large boldface.

Subhead in regular boldface. Notice that in this heading, as in the ones below, the indent is “hanging”—the second line of text doesn’t begin at the left margin. This enhances clarity.

Second-level subhead in boldface italic. Notice that the italicizing makes the heading a tad smaller even though the typeface specifications are otherwise the same.

Third-level subhead in italic. Rarely will you need this level, but it’s good to have it available.

Structure of the Argument

Track the Court's likely questions, not the record and caselaw.

Give Bearings

The **architecture** of your writing must be overt.

Make the **logical structure** obvious and intuitive.

Help readers work less; **connect the dots** for them.

Give Bearings

- Use **outlines** (visual structure is critical).
- Use **numbered lists and bullet points**.
- Use **white space** effectively (white space helps readers).

Use Headings

- Use **highly informative headings**, preferably full sentences that amount to succinct propositions.
- You need headings, or bold assertions, typically every one to three pages.

Use Headings

- Nest your headings and subheadings (Russian Doll)
- Argue in the alternative

Use Umbrella Paragraphs

Include an umbrella paragraph before your headings and subheadings.

Show the court a trailer.

Set the stage for the subheadings that follow.

Generate Your Structure

1. In each heading, **offer a substantive reason** to do what your client is asking the Court to do. Make headings persuasive.
2. In the first sentence of each paragraph **answer questions** you expect the Court to need answered.

Generate Your Structure

3. Within each paragraph, **explain how each authority proves the first sentence true.**
4. Between sentences, **include transition words and phrases** to show how each authority proves your point differently from the others.

Bridge the Gap: Linking Headings and Topic Sentences

For the **opening paragraph** in a section (following a heading or subheading), **echo the heading or subheading** without heavy-handedly repeating it. Be artful here.

Remember that your paragraph must be **self-contained**, without reference to the heading or subheading.

Bridge the Gap: Linking Paragraphs

Readers crave smooth transitions between paragraphs.

Otherwise, it's hard to know how the first sentence of a new paragraph connects to what came before.

Bridge the Gap: Linking Paragraphs

Use a “**kicker sentence**” to set up a series of points that you will elaborate on in the following paragraphs.

Bridge the Gap: Linking Paragraphs

Connect the end of one paragraph to the beginning of the next to maintain narrative flow.

Specifically, embed a **transitional word** in each **topic sentence** (beginning with the second paragraph of a section).

3 Options for Creating Bridges:

Pointing words (*this, that, these, those*) because they point to something immediately preceding.

Echo links which are words that repeat an idea in summary language or otherwise reverberate from what has just preceded.

Explicit connectives (*by contrast, finally, further, in sum, likewise, etc.*) which are obvious transitional words.

3 Options for Creating Bridges:

Use all three devices to establish continuity from paragraph to paragraph.

Study the use of transitional words in first-rate nonfiction (the *Atlantic*, the *New Yorker*, the *Economist*).

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Creating Bridges

Lay your foundation for bridging by reinforcing the main idea in the **last sentence of a paragraph**, setting up the **topic sentence of the next** to highlight the **connection** between the two.

Creating Bridges

Read the last and first sentences of successive paragraphs to see whether they join smoothly. If not, consider whether you've omitted some part of your argument.

Additional Tips for Smoothing Out the Narrative Within Paragraphs

- Use **verbal markers** to guide your readers through the unfolding of ideas.
- Introduce **lists** of points or ideas explicitly before enumerating.
- Never allow yourself to **quote** words that you haven't properly **introduced**.

Additional Tips for Smoothing Out the Narrative Within Paragraphs

- Whenever possible, keep your subject and verb close together; try putting any modifying phrases at the beginning of the sentence.

Not this: Smith, in his motion, claims. . . .

But this: In his motion, Smith claims. . . .

Additional Tips for Smoothing Out the Narrative Within Paragraphs

- Avoid throat-clearing language, e.g, It is important to note that. . . .
- Use short sentences, plain words, active voice, and specific rather than general terms to make your writing sound more natural.

Additional Tips for Smoothing Out the Narrative Within Paragraphs

- Break up long, complex sentences.
- Even if your arguments are technical or complex, your sentences never should be. The more complex the ideas, the simpler the sentences conveying them should be.
- Vary the length of your sentences while aiming for an **average of 17-20 words per sentence.**

Creating Connections at the Sentence Level

Every sentence should be related directly to the ones next to it.

Avoid “bumps” or unheralded shifts in the narrative.

If you’re darting off in a new direction, you’ll create a “bump” unless you include a contrasting connective—usually a word such as *but*, *even so*, or *yet*.

Making Key Points Stick

- Phrases that Pay: Key Terms of the Rule
- Strategic Use of Repetition

Phrases-That-Pay

If your argument is based in whole or in part on well-established statutory or common law rules, you can structure your argument by looking for each rule's “key terms.”

Phrases-That-Pay

By focusing on one phrase-that-pays within each subsection, you ensure that you're focusing on one issue or sub-issue at a time.

Phrase-That-Pays: In Plain View

IF a person exposes activities to the plain view of outsiders, THEN those activities are not protected against observation by the Fourth Amendment's search and search limitations.

Strategic Use of Repetition



Build a bridge between paragraphs by repeating or recasting a key term from the end of the first.

Repeating key words or phrases connects two points in the readers' minds.

Another effective bridging technique is simply to list reasons that the last thing you wrote is true.



Strategic use of repetition of key facts and legal concepts throughout a brief help bind together stories and legal criteria.

Add Speed

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Add Speed

- Start sentences with short, **punchy** words;
- Use short and **varied transitions**; and
- Vary the “**signposts**” that help the readers track the brief’s logic.

Add Speed

Most lawyers stick to the 8 or so tried-and-true transition words: *consequently*, *moreover*.

These heavy-handed transitions become a crutch that communicates little to the reader other than that another point is on the way.

Add Speed

But a great advocate might use 50 or more light connectors.

Ross Guberman offers a comprehensive list of 100-plus transition words and phrases.

These signposts are arranged according to the goal for the sentence.

Add Speed

But the EPA cannot claim that ADEC's decision was "unreasoned." **Nor** can the EPA assert that. . . . **How** to control emissions within those standards, without exceeding available increments, was for the State to decide.

Add Speed

At bottom
Under that approach
By extension
To this end
Because
Indeed

Say
And so
In any event
Instead
Thus
As in

Spice Up Your Prose



Spice Up Your Prose

- Zinger Verbs
- Visual Images
- Figures of Speech
- Cultural References

Zingers: Evocative Verbs

Choice verbs enliven your prose, painting pictures in the reader's mind that animate your legal analysis.

Bryan Garner offers 100-plus **picturesque verbs**.

Ross Guberman shares 50 **zinger verbs**.

Noah Messing lists about 200 **trim verbs**.

Zingers

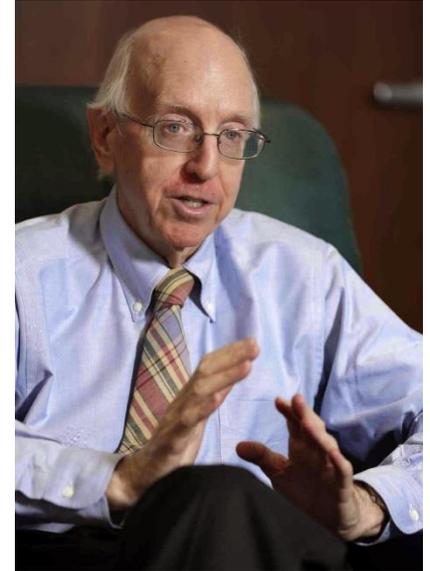
The elected governments of the States are actively confronting the challenges DNA technology poses to our criminal justice systems and our traditional notions of finality, as well as the opportunities it affords. To suddenly constitutionalize this area would short-circuit what looks to be a prompt and considered legislative response.

Zingers

“**Short-circuit**” conjures up sparks, malfunctions, destruction: the very sorts of images the Chief wants you to see.

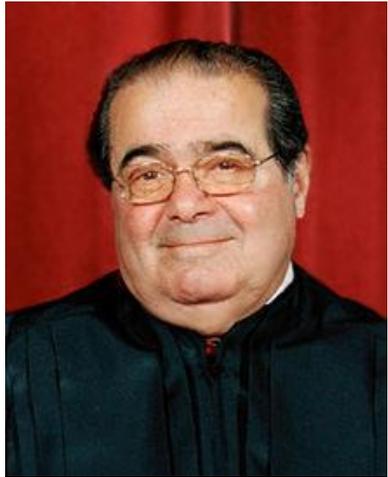
Visual Images

“Wherever possible, use pictures, maps, diagrams, and other visual aids in your briefs. Some lawyers seem to think a word is worth a thousand pictures. The reverse, of course, is true. Seeing a case makes it come alive to judges.”



Hon. Richard A. Posner, *Effective Appellate Brief Writing*, LITIGATION NEWS, available at http://apps.americanbar.org/litigation/litigationnews/trial_skills/appellate-brief-writing-posner.html (last visited July 27, 2012).

Metaphors and Analogies

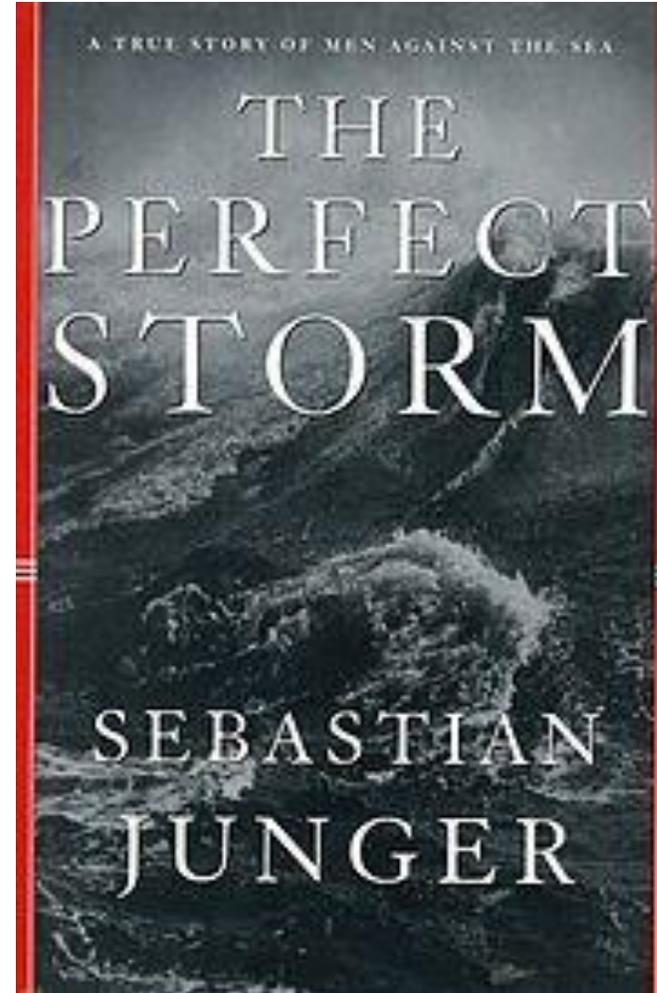


Justice Scalia's line of questioning at oral argument highlighted an analogy popular among conservative pundits:

comparing the individual mandate to the federal government forcing people to purchase broccoli.



Metaphors and Analogies

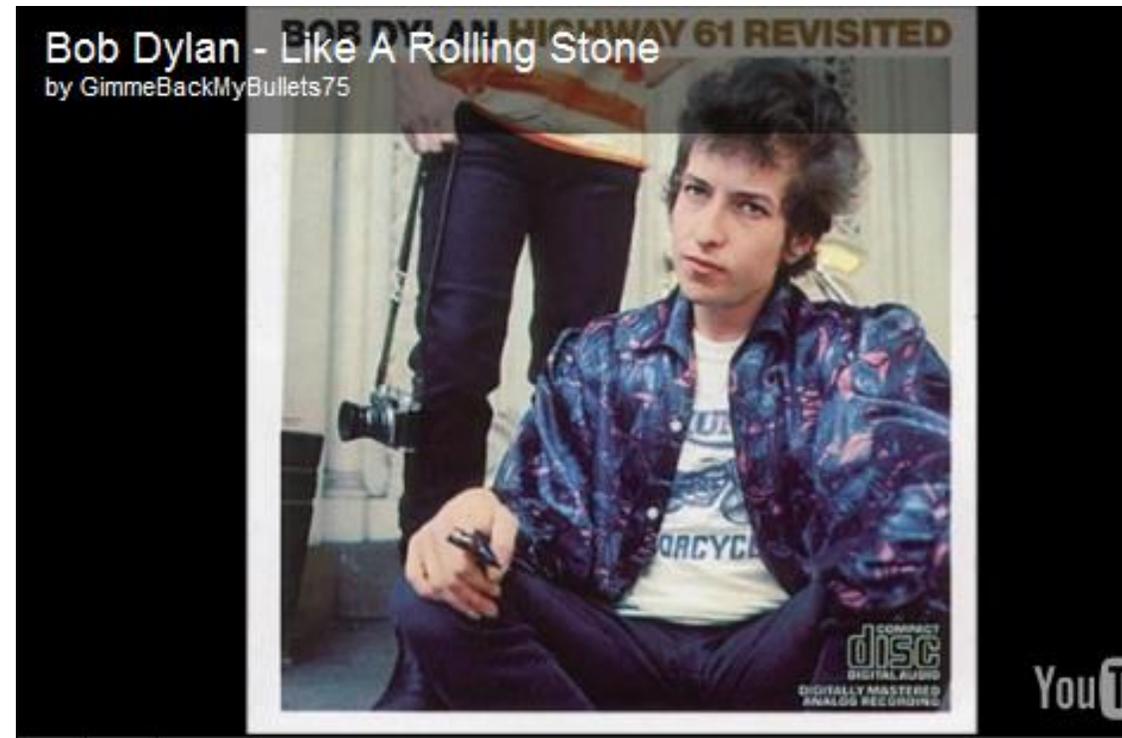


The “Perfect” Analogy?

Justice Roberts and Bob Dylan



“The absence of any right to the substantive recovery means that the respondents cannot benefit from the judgment they seek and thus lack Article III standing. **‘When you got nothing, you got nothing to lose.’**”



“You Don’t Mess Around with Jim!”



Eleventh Circuit Judge Carnes opened a recent opinion with: “In one of his ballads, Jim Croce warned that there are four things you just don’t do: **‘You don’t tug on Superman’s cape/ You don’t spit into the wind/ You don’t pull the mask off that old Lone Ranger/ And you don’t mess around with Jim.’** He could have added a fifth warning to that list: **‘And you don’t let a pistol-packing mother catch you naked in her daughter’s closet.’”**

Cultural References

Find creative ways to **link** the **law** to the treasure trove of shared general **culture**.

Cultural References

- Song lyrics
- Proverbs
- Idioms
- Literary Allusions

Cultural References

“Thus, in bankruptcy, as in life, the more money we come across, the more problems we see.”

Notorious B.I.G. *Mo Money Mo Problems*
on *Life after Death* (Bad Boy) Arista 1997.

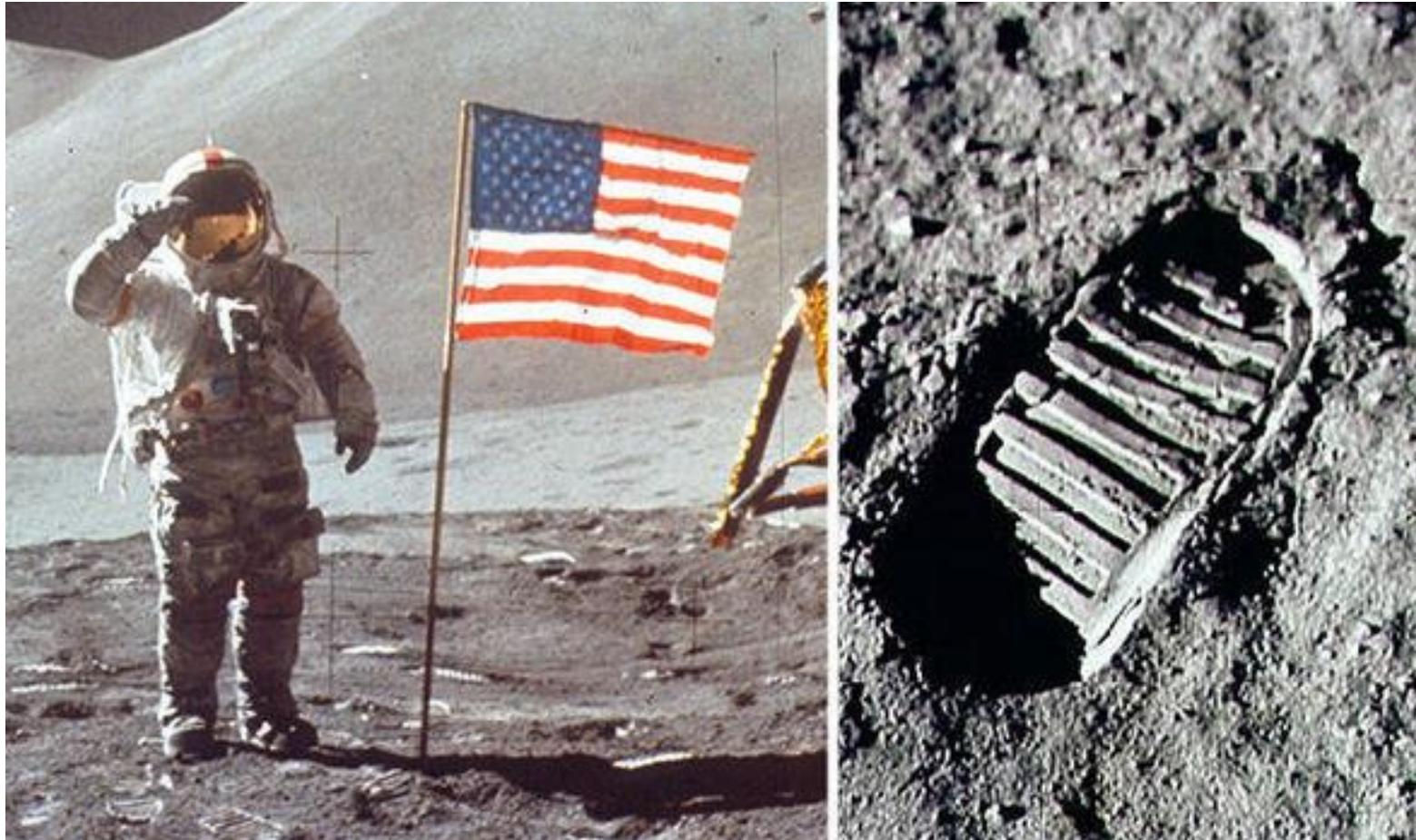
Google = Legal Writing

- Google is a metaphor for effective legal writing.
- Strive to create briefs that address complex legal issues, yet are simple and useful.
- Think of your work as more creative and inventive.

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THE ART OF LEGAL WRITING: MEN WALK ON MOON

Strong Written Advocacy for the Busy Professional



"All the News
That's Fit to Print"

The New York Times

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MEN WALK ON MOON

*ASTRONAUTS LAND ON PLAIN;
COLLECT ROCKS, PLANT FLAG*

The action of respondents in excluding minor petitioners from admission to Sousa Junior High School solely because of race or color and in refusing to permit adult petitioners to enroll their children in Sousa Junior High School solely because of race or color deprives petitioners of their liberty and property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.