

# Catching the Court's Eye:

## Effective Writing and Editing Techniques to Elevate Your Advocacy

UNIVERSITYof **HOUSTON**  

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# **TODAY'S OBJECTIVES**

1

- Pre-Writing

2

- Persuasion

3

- Editing and Readability

4

- A Good Writing Toolbox

# Pre- writing.

Betty S. Flowers, ***Madman, Architect, Carpenter, Judge***  
*Roles and the Writing Process*, 58 LANGUAGE ARTS No. 7, Oct. 1981, at 834-36.

You need to write  
words.

It is ok if they are  
garbage words.

You can fix them  
later.

Persuasion.

# Tell a Good Tale.

Write an engaging statement of fact.

1. Set the stage.
2. Use names and titles intentionally.
3. Replace dates with phrases that convey a sense of time.
4. Use headings to break up your fact section and to add persuasive effect.
5. Cut dates that don't matter.
6. Use charts | graphs | pictures.

Too often lawyers jump right into the legal nuances of the case without explaining, in clear terms, the legal context in which the case arises.

—Wisconsin Supreme Court Chief Justice Shirley Abrahamson

## Set the Stage.

Explain the “Brass Tacks”: who, what, when, where, why, and how.

Ross Guberman, *Point Made: How to Write Like the Nation’s Top Advocates* (2d ed. 2014).

Refer to parties by name.

“[S]peak of real people, not of categories. The plaintiff, defendant, and witnesses have names. Use them.”

Michael Tigar, *Federal Appeals: Jurisdiction and Practice* 333 (2d ed. 1993).

Use headings.

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“Get Martha on the Phone”

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“Peter Bancanovic Thinks ImClone is Going to Start Trading Downward”

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Stewart Sells Her ImClone Stock

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The Investigations Begin

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The Tax Loss Selling Cover Story

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Bancanovic Changes the Cover Story

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February 4, 2002: Stewart Lies to Investigators

# A picture is worth a thousand words ...

## What the Complaint says

**Dr. Neal Schultz.** Crushed walnut shell powder in St. Ives Apricot Scrubs are too abrasive for the face's skin. (Compl. ¶ 6 n.2.)<sup>10</sup>

## ... versus the witness' declaration

He does not "routinely warn consumers against using St. Ives and similar products containing crushed walnut shell." (Choi Decl., Ex. K (Declaration of Dr. Neal B. Schultz, M.D.) ¶ 2.) "The views being attributed to me in the Complaint are not my opinions," and "[t]o the extent Plaintiffs are relying on my statements to show that St. Ives Apricot Face Scrubs are unsafe or ineffective, that is misplaced." (*Id.* ¶ 7.)<sup>11</sup>

A picture is worth a thousand words ...

Product	Use
Trial Line trialline.net	Timeline maker
Piktochart create.piktochart.com	Graphics and modified photos
PowerPoint and Microsoft Word	Charts, graphs

Joseph Regalia, *An Eye for Legal Writing: Five Ways Visuals Can Transform Your Briefs and Motions*, APPELLATE ADVOCACY BLOG (May 25, 2019).

# Convey the “big picture.”

“In law the right answer usually depends on putting the right question.” —Justice Frankfurter, 320 U.S. 410, 413 (1943).

1. Your Issues Presented should be meaningful, not perfunctory.
2. Use a format that gets to the heart of the issue, from your client’s perspective.
3. Avoid long, single-sentence, convoluted questions.

# Garner's Deep Issue

Sentence 1 (Major Premise) = state the law for the narrow issue

Sentence 2 (Minor Premise) = provide outcome-determinative facts

Sentence 3 (Question Presented) = state the call of the question as a question

# What do you think?

This Court has held, as a matter of “public policy,” that judicial opinions are not copyrightable. Based on that precedent, lower courts have held that certain other “government edicts” having the force of law, such as state statutes, are not eligible for copyright protection. The question presented is: Whether the government edicts doctrine extends to - and thus renders uncopyrightable - works that lack the force of law, such as the annotations in the Official Code of Georgia Annotated.

# Disclose argument at a glance.

Write meaningful point headings.

1. Use frequent headings and subheadings to help the court follow and understand.
2. Each heading should be one persuasive sentence.
3. Reading just the headings should give an overview of your argument.
4. Nest the headings to show how it all fits together.

# Connect the dots.

Make connections in argument to save the court time and effort.



- 1. Use specific facts in analysis.**
- 2. Use key rule language in analysis.**
- 3. Use thesis sentences.**
- 4. Use repetition purposefully.**

# Use key rule language.

**Rule:** "To be closely related, the plaintiff must reside in the same household or be the parent, sibling, **child**, or grandparent of the victim."

## **Stronger:**

"Although X did not grow up in the same household as Y, because X is her biological **child**, X is closely related to her."

## **Weaker:**

"Although X did not grow up in the same household as Y, because X is her biological **son**, X is closely related to her."

use thesis  
sentences,  
~~not topic sentences.~~

Topic Sentence:

In its response, the State argues [X]. The basis for this argument is . . . [rebuttal].”

Thesis Sentence:

“The State’s reliance on [X] fails for two reasons. First, . . .”

significance  
(thesis sentence) .

In 1975, the Idaho Supreme Court decided *Hmelevsky*. In *Hmelevsky*, a daughter drove her parents' car to an unapproved location and, against instructions, allowed a third-party to drive the car, resulting in an accident. 539 P.2d at 600-01. The court held that the daughter nonetheless had permission to drive as she did . . . . *Id.* at 600, 602.

The *Hmelevsky* case supports a holding that Mr. Kingston was a close family member with implied, general permission to use Mr. Scott's car. In *Hmelevsky*, a daughter drove her parents' car to an unapproved location and, against instructions, allowed a third-party to drive the car, resulting in an accident. 539 P.2d at 600-01. The court held that the daughter nonetheless had permission to drive as she did, . . . . *Id.* at 600, 602.

Use repetition  
purposefully.

Traditional summary judgment is proper only if there is no **genuine issue of material fact** and the movant is entitled to judgment as a matter of law. To determine if a **genuine issue of fact** exists, the court must view the **evidence in the light** most favorable to the non-movant. Viewing **evidence in this light** requires the court to draw all **reasonable inferences** in the non-movant's favor. However, a **reasonable inference** requires more than merely colorable proof.

# Maximize moments of persuasion:

Word choice, voice, and detail.

Highlight	Diminish
Vivid language	Bland language
Detailed/longer discussion	Less detailed/shorter discussion
Affirmative phrasing	—
Idea repeated	“Once and done . . .”
Active voice	Passive voice
Short, direct sentences	—

Compare.

“Stevens **declined** to allow him to enter.”

“Stevens **refused** to allow him to enter.”

# Maximize moments of persuasion: Placement.

Highlight	Diminish
Main clause	Subordinate clause
Start/end of writing unit	Middle of writing unit

Maximize moments of  
persuasion:

Tell a compelling story.

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## Criteria\*

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## Source

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## Use

\*Retired Justice Murry B. Cohen

## MAXIMIZE MOMENTUM OF persuasion:

Select and use cases wisely.

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Two is often a crowd.

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Most judges favor explanatory parentheticals.

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Avoid excessive quoting;  
instead "weave" quotes.

Ross Guberman, *Judges Speak Out Behind Closed Doors: How Your Briefs Might Bug Them, and How You Can Make Them Smile Instead*, legalwritingpro.com (June 26, 2017).

## “Weave” quotes.

Indeed, the implausible justifications proffered by Proposed Intervenors merely reinforce the “**inevitable inference that the disadvantage imposed**” on gay and lesbian individuals by Prop. 8 “**is born of**” nothing more than naked “**animosity.**” See *Romer v. Evans* ...



Editing: In Three  
Parts.

# Document-Level Editing.

1. Does the central point emerge clearly and quickly?
2. Is there a strong counterargument that you haven't adequately addressed?
3. Can you dramatize your points better? Can you phrase them more memorably?

# Tone Matters.

Ross Guberman, *Judges Speak Out Behind Closed Doors: How Your Briefs Might Bug Them, and How You Can Make Them Smile Instead*, legalwritingpro.com (June 26, 2017).

**These common attack terms are “annoying.”**

- **disingenuous**
- clearly wrong
- baseless
- specious
- **without merit**
- frivolous
- unfortunately for [the other side]
- sanctionable



# Paragraph- Level Editing.

1. Can you spot a bridge at the outset of each paragraph?
2. Do you use transition words effectively?
3. For each block quotation, have you supplied an informative lead-in?

Sentence-Level  
Editing.

# Sentence Emphasis Matters!

Lee Harvey Oswald, who was killed by Jack Ruby, assassinated President Kennedy.

Jack Ruby killed the man who assassinated President Kennedy, Lee Harvey Oswald.

President Kennedy was assassinated by Lee Harvey Oswald, who was killed by Jack Ruby.

Disobey your English teacher.

- “**But** neither the United States nor any State shall assume or pay any debt or obligations incurred in aid of insurrection . . .” U. S. Const. amend. XIV, § 4.

# Basic edits.

Cut or reword pointless legalisms.

Reduce clutter. Try to cut each sentence by at least 25%.

Check for misused words, faulty punctuation, and other mechanical problems.

Read aloud, accenting the final word or phrase in each sentence. Does it read naturally?

# Some words are just hateable. Avoid them.

accordingly	it should be noted that
aforesaid	notwithstanding
arguendo	owing to the fact that
as follows (just use a colon)	prior to
	as such pursuant to
All Latin	
for the sake of argument	that being the case
foregoing	the Court must . . .
hereby	the fact that
hereinafter	the instant case
heretofore	utilize
in view of the fact that	wherefore

# Keep sentences short.

Gunther demanded an early trial date and breakneck discovery. [9] What Gunther wanted, Gunther got. [5] But now that Findlay seeks a hearing on its summary-judgment motion, Gunther wants to slam on the brakes, complaining that it needs more time to gather expert opinions. [28] Gunther ostensibly demanded the accelerated trial date to force a prompt resolution of its claims. [15] Yet now that Gunther may have that resolution, it does not want it. [13] Must Findlay's motion, already delayed once, be delayed again to accommodate Gunther's tactical timetable? [14]

## Reduce Clutter.

1. Convert *be*-verbs (*is, are, was, were, be, been*) into stronger verbs.
2. Convert passive voice into active unless there's a good reason not to.
3. Change *-ion* words into verbs when you can.
4. Check every *of* to see whether it's propping up a wordy construction. If so, rephrase.

# Wordy Expressions Substitutes

<b>On account of</b>		<b>because</b>
<b>In view of the fact that</b>		<b>because</b>
<b>In instances in which</b>		<b>when</b>
<b>In some instances</b>		<b>sometimes</b>
<b>In spite of the fact that</b>		<b>although</b>
<b>In all likelihood</b>		<b>probably</b>
<b>As yet</b>		<b>yet</b>
<b>In a (suspicious) manner</b>		<b>(suspiciously)</b>
<b>In a (sly) fashion</b>		<b>(slyly)</b>
<b>Of a (hostile) character</b>		<b>(hostile)</b>
<b>Is of importance</b>		<b>important</b>

Punctuation  
Matters.



# Comma Practice

Would you place commas in the following sentences? –Where?

I am planning a trip to Paris which is one of the greatest cities in the world.

The place that I would most like to see is the Eiffel Tower.

Pierre who is one of my business contacts will meet me at the airport.

# Proofreading tips.

1

- Read it out loud.

2

- Read it from the end, sentence by sentence.

3

- Read it in hard copy, not just on a screen.

# Readability



If you wouldn't say it, don't write it.

You wouldn't know it from reading Wilson's objections, but what is at stake is not Grieg's inability to depose Wilson's employees (or even Grieg's inability to depose them fully). What these objections are about – and this is all that they are about – is Wilson's unexcused failure to serve its expert witness disclosure by the deadline: July 13, 2011. Because Wilson didn't serve a medical report by then, Grieg assumed that Wilson would forgo medical testimony, and Grieg in turn decided against having Walim Alibrandi examined by a physician.

# Looks Matter.

Ross Guberman, *Judges Speak Out Behind Closed Doors: How Your Briefs Might Bug Them, and How You Can Make Them Smile Instead*, legalwritingpro.com (June 26, 2017).

## 1. Use the Oxford comma.

- 56% prefer the Oxford comma
- 21% prefer no Oxford comma
- 23% don't care

## 2. Put citations in text, not in footnotes, unless the court suggests otherwise.

- 78% prefer citations in the text
- 12% prefer citations in footnotes
- 10% don't care

## 3. Include two spaces after periods; judges are “traditional.”

- 62% prefer two spaces after a period
- 21% prefer one space after a period
- 17% don't care

#### **4. Do what you want with your right margin.**

*(though typography expert Matt Butterick recommends ragged, which is easier to read)*

- 35% prefer the text to be fully justified
- 31% prefer a ragged right margin
- 34% don't care

#### **5. Use italics, not bold, for emphasis; but use emphasis sparingly.**

- 76% say bold or italics for emphasis is okay (occasionally)
- 11% don't want any use of emphasis
- 13% don't care

#### **6. Write numbers out only once!**

- 77% prefer numbers to be written out just once ("three")
- <1% prefer numbers to be expressed with both ("three (3)")
- 26% don't care

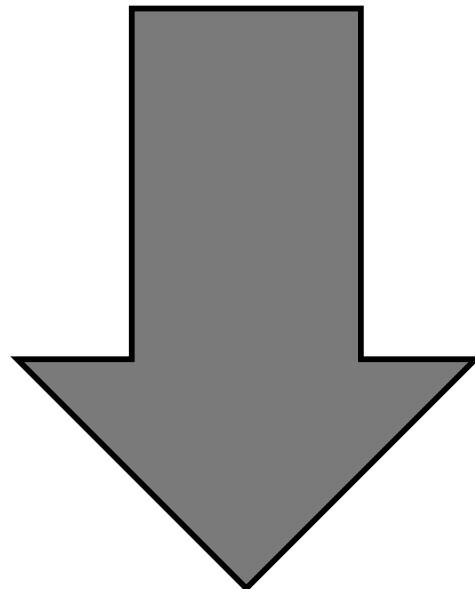
#### **7. Use contractions cautiously, if at all.**

- 37% prefer no contractions
- 42% say contractions are okay
- 21% don't care

And let's talk about  
those defined terms  
("terms") . . . .

**8. Define terms concisely and rarely, and use words rather than acronyms.**

- 77% prefer the defined term in parentheses ("ABC")
- 11% say including "hereinafter defined as" is okay
- 12% don't care



# What do the judges say?

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“If you need to use a defined term, use a word rather than an acronym.”

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“I dislike acronyms unless they’re very well known, like IRS.”

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“Avoid defining obvious terms.”

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“Define terms only when there is a possibility of confusion.”

# Shun “weird” acronyms.



ATM cards  
GM cars  
FAA regulation  
IBM computers  
USDA-inspected  
ADA, DOJ, UCC

VII

(for Valhalla Imports, Inc.)

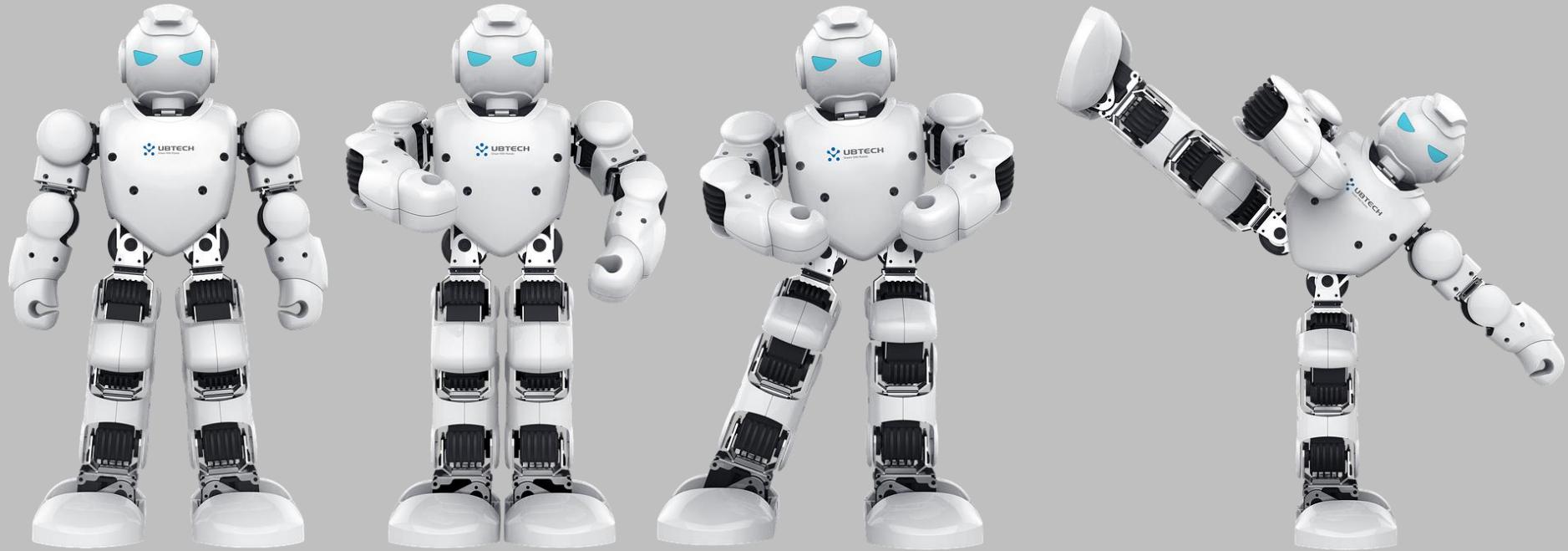
(Valhalla)

MCC

(for Maine Casualty Corporation)

(Maine Casualty)





# GOOD WRITING TOOLBOX

Artificial Intelligence in Legal Writing | Twitter | Legal Writing Blogs | Books

BriefCatch,  
PerfectIt, WorkRake,  
etc. . . .

	<b>BriefCatch</b>	<b>PerfectIt</b>	<b>WordRake</b>
Focus	Enhance clarity and concision	Proofreading	Enhance clarity and concision
Type of Analysis	One-time analysis	Series of tests	One-time analysis
Best Use	Before finalizing a document, to tighten language and improve readability	Before finalizing a document to check for errors and inconsistencies	Before finalizing a document, to tighten language and improve readability
Tests Readability?	Yes. Offers a set of five scores related to readability, and a narrative report	No	No

READING HAPPINESS SCORE

70 / 100



SENTENCE LENGTH INDEX

55 / 100



FLOW INDEX

100 / 100



PUNCHINESS SCORE

92 / 100



PLAIN ENGLISH INDEX

89 / 100



BriefCatch: Readability  
Report

# BriefCatch: Narrative Report

Thanks for using BriefCatch to help improve your draft!

Your draft has 18 paragraphs ranging from 1 to 13 sentences.

Your draft has 94 sentences ranging from 2 to 43 words.  
The average number of words per sentence is 19.

Make sure you're not overusing the term "concerning," which appears 2 times.

The greatest stylistic strength of your draft is that you favor short words.

The best ways to improve the style of your draft are to shorten your paragraphs and to shorten your sentences.

Blogs	Twitter
lawprose.org/lawprose-blog	@BryanAGarner
legalwritingpro.com/blog	@legalwritingpro
<a href="https://writing-like-a-lawyer.teachable.com/p/about-wll">https://writing-like-a-lawyer.teachable.com/p/about-wll</a>	@UHLC_LSS

Some of our favorite legal writing books:

Robert Dubose, *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* (2010).

Bryan Garner, *Legal Writing in Plain English: A Text With Exercises* (2nd ed. 2013).

Ross Guberman, *Point Made: How to Write Like the Nation's Top Advocates* (2nd ed. 2014).

Antonin Scalia, Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (2008).