

Understanding “Style” in Legal Writing

By Stephen V. Armstrong and Timothy P. Terrell

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One of the more elusive, and controversial, characteristics of professional writing (legal writing included) is a writer’s “style.” In our programs for practicing lawyers, most of the audience seems surprised that this topic arises at all. Style, they assume, is something a reader encounters in literature; lawyers, on the other hand, are just hard-working, anonymous purveyors of careful legal analysis. In any case, they also assume, a writer’s ability to imbue prose with “style” is something innate. Even if they wanted to make their writing “stylish,” it would be beyond their talents.

They are wrong, on all counts. Style is an unavoidable element of anyone’s writing, even a lawyer’s. The only question is whether the writer has control of it, and can therefore exploit it properly, or does not, thus leading to unintended and sometimes embarrassing results.

Misunderstanding Style

Two other assumptions also make it difficult to get lawyers or law students to accept style as a legitimate characteristic of legal writing. The first is that style is synonymous with sentence structure, and therefore any micro-level changes in a document are by definition “stylistic.” We disagree. Although aspects of a writer’s style will often manifest themselves in those details, style also emerges from a document’s organization and overall approach to its readers. The second assumption is that style is equivalent to “personal preferences”—as one commentator put it, “the tastes, needs, predilections, and pet peeves of

readers.”¹ Certainly style suggests something individual, and it does involve choices among options. But it is a mistake to think of those choices as merely idiosyncratic and irrational. As much as any of the other choices we make when we write, they should have a rational, conscious purpose.

To help lawyers understand why style matters, and why they cannot ignore it even if they wanted to, we have found that it helps to turn—appropriately, given our topic—to a metaphor. Style is sometimes thought of as “the icing on the cake.” This is an unfortunate image, for it suggests that you could somehow scrape off the “style” and leave the substance unaffected. Quite the contrary, properly understood, style is *embedded* in the document, like the flavor of the cake itself. It is unavoidable, but it is nevertheless distinct from—or, at least, distinguishable from—the nutritional substance.

The Importance of Style

So we need a better metaphor. Our suggestion is this: Style in professional prose is like mountain air.

Note the connections:

First, mountain air is invisible; it is transparent; you never see *it*. But everything you see *through* it seems to stand out in sharper detail. It is as if, when you travel to the top of a mountain, your eyesight suddenly improves. Style in professional prose should have the same qualities: It sharpens the reader’s intellectual eyesight, rather than calling attention to itself through jokes or poetry or fancy words.

Second, mountain air is cool, pleasant, and invigorating: The place has a “nature,” an aura about it that is refreshing and stimulating. You

¹ Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 1 Leg. Writing 143, 154 (1999).

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actually enjoy waking up in the mountains and traveling through them.

From that metaphor, we draw the two most important goals of a professional style. First, it should make the substance stand out more clearly and memorably, and keep the reader awake and engaged no matter how dense the analysis. Second, it should create a credible, engaging persona, one in whose company the reader is glad to spend some time.

Analyzing Style: Rhythm and Character

Countless techniques in writing can produce these effects, so the potential breadth of a discussion of style is immense. To help novice legal writers focus on their style in a manageable, practical way, the best starting place is with two concepts: “rhythm” and “character.”

Because we discussed rhythm in an earlier article,² in this one we will simply summarize. Rhythm refers basically to the changes in the pace and flow with which a reader moves through your writing: quickly or slowly, smoothly or with pauses and interruptions. An invigorating rhythm avoids monotony by variation. But the variation is not random: It is used for emphasis and focus, so the reader pays most attention to the most important information. These qualities of variety and emphasis can be produced at both micro and macro levels. At the former, our previous article described the familiar techniques: primarily, variations in the lengths of sentences and in their internal structure and punctuation. At macro levels, similar effects can be created by varying the lengths of paragraphs and sections, by using interrupting

white space and devices like bullet points and lists, and by using subheadings.³

For legal writers, however, “character” is even more important than rhythm, because it goes more directly to a writer’s credibility and to the connection between a writer and reader. When you write, you necessarily reveal a professional persona. Ideally, that persona should be consciously chosen and shaped; often, though, it emerges as if by accident because the writer fails to control the signals about character that all but the most impersonal, contract-like documents inevitably send.

Like rhythm, character is manifested at both the macro and micro levels. At the macro level, it arises from such organizational choices as whether to move cautiously toward a conclusion or begin with one, or whether to work through authorities toward a coherent analysis or to imbed authorities in an analysis that is clearly yours, not just “the law’s.”⁴ At the micro level, character arises from diction and syntax: the words we choose and the structure of the sentences in which we place them. We will discuss the micro points first, and conclude with larger examples that combine and illustrate both levels.

“Micro” Character: Diction and Syntax

Consider the following two opening paragraphs of judicial opinions, each written by a male. Their gender is relevant because the writing reveals so

³ Rhythm is an important part of the context for the contentious debate about footnotes. Footnotes interrupt both the pace and flow of the reading process (see what just happened to you?). As a result, they are not only distracting; they can also have the unintended effect of emphasizing what is in the footnote. They should therefore be avoided unless the alternative is even worse—for example, intruding a long quotation or digression into the main text. For legal readers, however, citations are *not* digressions—lawyers are seldom slowed down or distracted by seeing a citation in the text.

⁴ Organizational “character”—for example, the distinction between the “stance” and “substance” of a legal analysis—has been discussed by one of the present authors in the context of judicial opinions. See Timothy Terrell, *Organizing Clear Opinions: Beyond Logic to Coherence and Character*, 38 *Judges’ J.* 4 (1999).

² Stephen V. Armstrong and Timothy P. Terrell, *The Subtlety of Rhythm*, 12 *Perspectives: Teaching Legal Res. & Writing* 174 (2004).

much of their character that, once you know their gender, you can actually describe how both of them dress coming to work.

Example 1:

This case comes before the Court on the third intermediate accounting of the trust under the will of Jane F. Smith. On a prior accounting, the West Carolina Supreme Court held that a provision in a will leaving property to “issue” of another is presumed not to include the adopted child of the daughter of the testatrix. We are now asked to reconsider the question based on subsequent changes in the decisional law of this State. The case raises a substantial, if not altogether novel, question of the duty of a court to enforce a prior holding, the legal reasoning of which has been undermined by later rulings.

What clothes would suit this style? When we ask audiences that question, the answers usually include “bow tie,” “three-piece suit,” “watch chain with a Phi Beta Kappa key hanging from it,” and the like. The style is very formal; the character that emerges from it will seem comfortably dignified to some, slightly pretentious or old-fashioned to others. Now consider:

Example 2:

In this malpractice lawsuit the issue on appeal is whether the trial judge properly granted the defendant’s motion for summary judgment. The defendants filed a motion to dismiss because the complaint failed to state a claim on which relief could be granted. The defendants then filed four affidavits to support their motion and moved the court to treat the motion as one for summary judgment against them.

Here we see at most a blazer (if that). The starkly different impressions generated by these two passages are a function of just two elements: sentence structure and word choice. The first writer favors more complex sentences and more formal diction. The second, in contrast, uses very plain

sentence structure with no internal punctuation, and equally plain words.

The difference between these two characters is, in part, a difference in formality, and that is an aspect of character to which legal writers should be particularly alert, especially when they are writing to nonlawyers. Among the following four sentences, all having the same legal substance, which has the formality (or informality) that best suits your own professional persona?

1. Prior to plaintiff’s purchase of the automobile, defendant’s salesman provided him with information about its previous owner that subsequently proved to be false.
2. Before the plaintiff purchased the automobile, the defendant’s salesman provided him with information about its previous owner that later proved to be false.
3. Before the plaintiff bought the car, the defendant’s salesman gave him information about its previous owner that turned out to be false.
4. The sucker got stuck with the lemon because the salesman fed him some **** about the guy who got rid of it.

The diction in these sentences descends from the hyper-formal to the plainspoken. When we ask audiences to vote for their preference (ruling #4 out of order, despite it being the universal favorite), we will usually have no votes for #1, perhaps a quarter to a third of the audience will pick #2, and everyone else will choose #3. Then we turn the question around: Of these three, which is the one you expect to see most often in the legal prose you read? The overwhelming majority choose #1. Why the disconnect? Why do lawyers imagine themselves as #3s when readers (even legal readers) most often perceive #1? The problem is that at this level of detail, busy writers often operate on automatic pilot without much thought to the character they are portraying in their prose. And, when legal writers are on automatic pilot, most tend to drift into more

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formal prose, because they have read so much of it during their education.

The differences among these examples have to do with more than formality, however. They also affect the relationship between the writer and reader. Is it distant and impersonal, or direct and, so to speak, face-to-face? Does the writer seem elevated above the reader, or on the same level? For example, here is a letter sent by a lawyer to a client announcing the settlement of litigation. Imagine yourself to be this client:

Dear Mr. Richards:

In reference to your case, please be advised that defendant has agreed to a settlement, the preliminary terms of which are set forth in the document enclosed herein. Prior to the completion of the remaining details of the agreement, this office must be in receipt of the following documentation:

1. A written estimate from Dr. Jones for the completion of therapy in regard to plaintiff's leg injury.
2. ...

The distance, formality, and even arrogance of this writer are palpable, though probably unintentional. Here is a revision that establishes a much more direct and personal connection:

Dear Mr. Richards:

As we discussed yesterday, Trust Us Auto Sales has agreed to settle your suit against it. The terms are set forth in the enclosed document, which you should review carefully. I believe the terms are favorable, but I urge you to think them through carefully and to phone me if you have questions.

In order to complete the details of the agreement, I will need the following documents by next Thursday:

1. A written estimate from Dr. Jones for the completion of therapy for your injured leg.
2. ...

“Macro” Character: Beyond Clarity

Character at the macro level is a large topic indeed, involving subtle choices between “reporting” an analysis and “dominating” it. The goal for legal writers is to demonstrate to the reader not only that they can organize material clearly, but that they also deserve the reader's professional respect—because they are impressively competent and show justifiable confidence in their work. Organizational forms that can produce this respect are, of course, numerous, so we will close with just two quick examples that illustrate rather than exhaust the point. The first is careful, precise, formal, and objective, perhaps to a fault. The second is aggressive and snappy, again perhaps to a fault. Note how these impressions, produced by the basic organization and approach, are reinforced in both examples by a corresponding “micro” persona as well.

Example 1:

This is a class action brought by plaintiffs on behalf of all persons (the “Class”) as described below, other than defendants and related parties, who purchased shares in BigBroker's Term Trust 2003 (“Trust 2003”) during the period from its inception on or about April 22, 1993, to July 19, 1994, and/or shared in BigBroker's Term Trust 2000 (“Trust 2000”) during the period from its inception on or about December 22, 1993, to July 19, 1994, inclusive (the “Class Period”), for violations of Sections 11, 12 and 15 of the Securities Act of 1933 (the “1933 Act”) and Section 13 of the Investment Company Act of 1940 (the “1940 Act”). The gravamen of the federal securities claims is that defendants made false and misleading misrepresentations and omissions concerning the Trusts in violation of the federal securities laws in prospectuses issued on the offering of the Trusts (the “Offering Materials”) and in the marketing of the Trusts.

Example 2:

This case belongs in California.

Plaintiff is a California resident who was injured, while in New York, by false and defamatory statements published in California blaming him for the collapse of a California company.

Defendants—two huge multinational conglomerates that do business in California plus an officer of both who was personally served here—now argue for a *forum non conveniens* dismissal of the action in favor of their home turf in France. This argument ignores:

- the critical California events animating the claim,
- the relevant evidence in California, and
- the fact that these events and this evidence continue to be the subject of government inquiry, civil litigation, and public interest in California.

Brief writers would describe the difference between these two as either getting to the point quickly, or wasting the judge's time with background information rather than an argument. But the difference matters not only to the brief's efficiency and persuasiveness; it also matters to the judge's perception of the writer's persona: Is the writer

in control? Bold enough to state a point of view immediately? Even perhaps a little too argumentative at the start? Or, instead, hiding out quietly behind all the background information?

None of the choices we have been describing is “correct” in some fundamental sense. They are indeed choices. In specific documents, the choice may depend on the situation: your audience, your purpose, and the conventions of the situation or the document. Over a career, however, the choices should also depend on a writer's conscious decisions about the professional character he or she wants to create.

So we are back, then, to “personal preference,” but to a preference guided by principle rather than habit: How do you define yourself as a professional, and how do you want your readers to perceive you? About these choices, reasonable people can disagree. For example, in the letter to the client above, some people find the revision too informal and folksy, and indeed argue that their clients expect a kind of professional aloofness in their lawyers' communications. But that is precisely the kind of editorial conversation that should take place when writers discuss style, and it is a long step forward from “it's just style.”

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Another Perspective

“Civility ‘can be taught and learned.’ Law professors often object to this statement, arguing that law students should already know how to behave with civility, and if not, it is too late. But it is not too late. Law students are smart. They understand what matters. If we show that civility is important by naming it, modeling it, teaching it, providing feedback on it, and evaluating it, students will learn those skills. In teaching professionalism skills to his students, one professor of medicine provides them with what he calls the ‘three ‘E’s— expectations, experience and evaluation.’ He first provides clear expectations for his medical students, naming the behaviors he seeks. Second, he tells them how they will be evaluated. And finally, he gives students opportunities to practice and get feedback on those skills. He has had no difficulty in having his students learn professionalism. As another physician noted regarding the teaching and measuring of medical professionalism, people ‘don’t respect what you expect; they respect what you inspect.’ Teaching medical students to develop emotional and social skills is now a part of the medical school curriculum. Medical students must also show they have these skills to get their license to practice. We law professors can similarly ask students to be civil, explain what civility means, provide feedback on civility, and assess how they practice civility. Perhaps acting with civility might even one day be a bar requirement.”

—Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 *Legal Writing* 113, 131–132 (2007).