

## What Attorneys Can Learn from Children’s Literature, and Other Lessons in Style

By Benjamin R. Opipari

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U.S. Supreme Court Justice Potter Stewart, when asked to define pornography, famously said that it was hard to define, “but I know it when I see it.” The same can be said for rhetorical style. Because of its nebulous nature, some teachers shy away from the teaching of style. Instead, they teach Rules. Some useful (commas, semicolons), others made up (split infinitives, beginning a sentence with *and* or *but*). Brock Haussamen, in *Revising the Rules: Traditional Grammar and Modern Linguistics*, writes that rules like the split infinitive and final position prepositions have achieved “grim fame” because “the errors are exceptionally easy to spot. Finding them requires almost no knowledge of grammar; one need only scan the word order to find a word between *to* and a verb, or a concluding preposition. For those over the decades who have worried that their grip on grammar is not what it should be, these are two rules that have been easy to grasp and easy to wield.”<sup>1</sup> What Haussamen is saying is that teaching grammar and punctuation is a safe proposition: violations of the rules are easy to spot and are easy to teach. Teaching style, on the other hand, is hard.

Style, or *elocutio*, is one of the five canons of classical rhetoric. Writers have defined it in many ways. Swift, for instance, called it “proper words in

proper places.” The Greeks thought that good style evolves when the writer takes the thoughts collected by invention and puts them into words so that they can be delivered orally. John Henry Newman had probably the most appropriate definition for this discussion: “Style is a thinking out into language.” Both the Greeks and Newman speak to what I consider the golden rule about good style: it is euphonic and natural sounding. It just sounds good.

Style is not ornamentation or the artificial gussying up of language. This was never the definition intended by the Greeks. With style, according to Edward P.J. Corbett and Robert J. Connors in *Classical Rhetoric for the Modern Student*, “[M]atter must be fitted to the form, and form to the matter. ... It is another of ... the means of arousing the appropriate emotional response in the audience and of the means of establishing the proper ethical image.”<sup>2</sup> It is easy to see, then, that style should be of foremost importance to the legal writer.

A writer’s goal should be to project a unique personality. We recognize the best writers without ever looking at the name on the cover. Samuel Taylor Coleridge said that the test of perfect style was “its untranslatable-ness in words of the same language without injury to the meaning.” Coleridge means that with perfect style the writer’s words are so unique that they can be written no other way. And it’s not because the writer knows how to use commas; it’s because she has style. Unfortunately, many people consider the mark of good writing to be the ability to avoid split infinitives and end prepositions and the ability to use a comma properly. But impeccable grammar and good writing are not necessarily related: slavish devotion

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<sup>1</sup> Brock Haussamen, *Revising the Rules: Traditional Grammar and Modern Linguistics* 138 (2000).

<sup>2</sup> Edward P.J. Corbett & Robert J. Connors, *Classical Rhetoric for the Modern Student* 338 (4th ed. 1999).

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to Rules can still yield atrocious writing. Teachers of writing in all disciplines—legal or otherwise—must understand that good pedagogy is as much about what you can do as a writer as it is about what you are not “allowed” to do.

In her essay “On Style,” Emily Hiestand writes that stylish prose is “language written with attention to texture and tone, imagery, music, and the resonance between words.” She says that “Language is not a conveyor belt trundling a cargo or something else called ‘the idea’ but is itself integral to the idea. . . . Idiom, cadence, and the leanness or languor of language all work connotatively to communicate, often as strongly as an overt message.”<sup>3</sup> Hiestand’s definition is one of my favorites, but it’s important to add that we can break down style into two categories: variety and symmetry, two seemingly oppositional categories that work together to produce stylish writing.

In *Perrine’s Sound and Sense: An Introduction to Poetry*, Thomas R. Arp and Greg Johnson say that all art consists of “giving structure to two elements: repetition and variation.” They continue:

All things we enjoy greatly and lastingly have these two elements. We enjoy the sea endlessly because it is always the same yet always different. We enjoy a baseball game because it contains the same complex combination of pattern and variation. . . . We like the familiar, we like variety, but we like them combined. If we get too much sameness, the result is monotony and tedium; if we get too much variety, the result is bewilderment and confusion.<sup>4</sup>

In the context of legal writing, then, style involves an ideal combination of these two elements.

Variety, for example, is important when constructing sentences. Most grammarians advocate a sentence length between 20 and 25

words. I will not quibble with this rule. But when people run sentences through computer programs and algorithms to gauge readability, much like accountants crunch numbers, I am troubled.

We should instead trust something far simpler: our ear. Length should not always be the primary determinant as to whether the sentence makes sense, because I have seen incoherent 10-word sentences and 100-word sentences of literary artistry. The writer who relies too heavily on readability programs will produce, not surprisingly, robotic prose without freshness and variety. And without variety, the reader becomes bored. Furthermore, telling students to follow the word rule can stifle creativity and expression. Using a computer to assess readability lets the writer off the hook when it comes to revision, and there is no substitute for the ear as the ultimate arbiter of coherence. In short, sentence length should be secondary to clarity. Use common sense, not a formula that looks like the quadratic equation.

Varying your sentence length, of course, involves mixing up the distance between the periods. Periods are those elements of punctuation that create pauses. However, other marks of punctuation—the comma, semicolon, and colon—also create pauses, and good writers count these marks as well when they consider variety. Thus, to avoid choppy writing, sometimes it’s more about the pauses than the periods. Richard Lanham, in his book *Revising Prose*, advocates that writers should write out each sentence on a sheet of paper and mark off its rhythmic units with a slash. For example, read the following fragment aloud: “One of the factors that limits and warps the development of a theory of composition and style . . .” You probably sound like a chugging steam engine—not good. Lanham divides the fragment into beats:

One of the factors/  
that limits and warps/  
the development of a theory/  
of composition and style . . .

This sentence also reminds me of a steam engine: “At least three legal concepts govern how an accused infringer bound by a permanent injunction related to a patent that has been declared invalid in a later

<sup>3</sup> Emily Hiestand, “On Style” in *Telling True Stories* 198, 199 (2007).

<sup>4</sup> Thomas R. Arp & Greg Johnson, *Perrine’s Sound and Sense: An Introduction to Poetry* 172 (2002).

proceeding may attempt to avoid injunction enforcement.” Breaking it into rhythms, we have

At least three legal concepts/  
govern how an accused infringer/  
bound by a permanent injunction/  
related to a patent/  
that has been declared invalid/  
in a later proceeding/  
may attempt to avoid injunction enforcement/

When revising this sentence, the writer would be wise to scrap it entirely and rewrite from scratch, breaking it up into two sentences.

Another way to achieve variety is to scatter short sentences throughout your writing. From an argumentative standpoint, short sentences are more emphatic. But like any stylistic device, overuse blunts their effectiveness and also creates choppy sentences. Used effectively, they create a dramatic impact, even a punch in the gut, especially at the end of a paragraph. Witness this paragraph from Ariel Levy’s article “The Lonesome Trail,” a profile of Cindy McCain in a recent issue of the *New Yorker*:

Many of McCain’s friends noted that after graduation she took a low-paying job as a special-education teacher at Agua Fria High School, near Phoenix, rather than a more lucrative position at her father’s company. McCain, too, frequently refers to his wife’s teaching background. She worked at Agua Fria for just one year.<sup>5</sup>

Levy’s paragraph is rhetorical brilliance. It is unquestionably argumentative. We know her position, even though she never explicitly states it: she is critical of the fact that most people overstate Cindy McCain’s teaching experience. Yet there is not one word of criticism here. The brevity of the last sentence carries the weight of the entire point. Such a short sentence, yet so much meaning. Levy’s end point is reinforced by the contrast between the long opening sentence and the final short one.

<sup>5</sup> Ariel Levy, *The Lonesome Trail*, *New Yorker*, Sept. 15, 2008, at 56.

In fact, she drives her point home by ordering her sentences in the paragraph from long to short. Had she written, “McCain, too, frequently refers to his wife’s teaching background, even though she worked at Agua Fria for just one year,” her rhetorical power would have evaporated.

In another example, notice the author’s emphasis at the end of this paragraph. So simple, and yet so powerful:

In the end, though, this story, like so many others before it, is not just a story about sex or a story about hypocrisy. It is a story about how power corrupts, or about how power destroys judgment. Powerful people like Spitzer seem to come to think of themselves as untouchable, as somehow entitled to indulge themselves in this way. What Spitzer is, though, is much simpler than that. He is an idiot.<sup>6</sup>

Emphasis in the form of concision demonstrates confidence and control, traits necessary to win over your audience in an argument. Look, for example, at Hollywood stars of the 20th century who exude confidence, control, and power. Robert DeNiro, Al Pacino, Clint Eastwood, John Wayne, Paul Newman, and Bette Davis are just a few. Their characters are not blathering, verbose fools. They speak few words, but these few words create trust and confidence in their audience. They make a point, refuse to dwell, and move on. They do not repeat themselves. Argumentative writers with an abundance of ethos exhibit the same confidence, control, and power through concise writing. They confidently state a point once, state it well, and continue. We follow those with confidence because they exude credibility. So be Clint Eastwood, not Ben Stiller. If you repeat the same point over and over, you’ll sound like you don’t believe your argument. The more you explain yourself, the less authoritative you appear.

<sup>6</sup> Bill Emmott, *Spitzer, Hypocrite and Idiot, Must Resign*, March 11, 2008, <[newsweek.washingtonpost.com/postglobal/bill\\_emmott/2008/03/spitzer\\_must\\_resign.html](http://newsweek.washingtonpost.com/postglobal/bill_emmott/2008/03/spitzer_must_resign.html)>.

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“As readers, we expect to know quickly what the subject is and what the subject is doing. If we have to wait, we get impatient.”

Good writers recognize when their sentences are too long. However, sometimes instead of rewriting, they get nervous and start inserting commas in an effort to slow the momentum. This usually makes things worse. Consider this unwieldy thing from Robert Kaplan in his essay “What Rumsfeld Got Right” in a recent issue of the *Atlantic*:

No firm believer in democratic transformation, he probably assumed, as did many other people at the time, that any new regime in Baghdad, even a military one, would be a dramatic improvement, in strategic terms for the U.S. and in human-rights terms for the Iraqis.<sup>7</sup>

Too many commas, too many clauses, too many misreadings. This sentence is best broken into two sentences. One version, using a short first sentence, would emphasize that he is no firm believer:

Rumsfeld was no firm believer in democratic transformation. He probably assumed, as did many other people at the time, that any new regime in Baghdad, even a military one, would be a dramatic improvement, in strategic terms for the U.S. and in human-rights terms for the Iraqis.

But I can probably do one better:

Rumsfeld was no firm believer in democratic transformation. Like many other people at the time, he probably assumed that any new regime in Baghdad, even a military one, would be a dramatic improvement in both strategic terms for the U.S. and in human-rights terms for the Iraqis.

Writing critics today advocate varying sentence length and style. Sentences are often too long because they are verbose; most novice writers create long sentences that can be halved with no loss of meaning. We can embrace long sentences when they can no longer be trimmed, when they are taut and full of muscle. And yet long sentences can be difficult to understand. It's often the distance

between the subject and the verb that hinders comprehension more than sentence length. In fact, even a short sentence can be challenging if there is too much distance.

As readers, we expect to know quickly what the subject is and what the subject is doing. If we have to wait, we get impatient. With too much separation between the subject and verb, the subject drops out of our short-term memory and we start over. Because the most important words in a sentence are the subject and verb, writers should put them as close together as possible. This is, after all, why short sentences are so emphatic: the subject and verb are usually next to each other. Consider this sentence:

Company X's provision of promotional materials where Smith directed customers to use the patented procedure, along with Smith's admission that it promoted and sold infringing columns to its customers with the knowledge that its customers would load the column in a manner that infringed Company X patent, proved overwhelming.

In this case, the writer probably recognized the enormous distance between the subject and the verb, so she added commas to surround the dependent clause in hopes that the pauses would aid in clarity. In theory, this is a wise idea. But there's a problem: dependent clauses by definition are subordinate, so the information contained in them is of secondary importance. Thus, the writer may have unintentionally given less emphasis to the part of the compound subject that actually deserves equal emphasis.

We encounter this stylistic problem in all types of sentences. Sometimes, even short sentences can be hard to understand:

The distribution of poems, posters, and pamphlets that the Chinese government finds political is illegal.

As a writer, your choice of verbs affects the clarity of your sentence. Most writing experts caution against using the verb to be. Jack Hart, in his book *A Writer's Coach: The Complete Guide to Writing Strategies That Work*, writes, “Linking verbs defy the whole

<sup>7</sup> Robert D. Kaplan, *What Rumsfeld Got Right*, *Atlantic*, July/August 2008, at 64.

idea of a verb. At their roots, they're mere definitions. They can convey opinion. But they can't convey action. . . . Because they lack action, linking verbs work like a sea anchor on a sailboat, crippling something that should be sleek and speedy."<sup>8</sup>

Verbs should be expressive and concrete, and the verb *to be* merely expresses a state of existence. The best genre for vivid verbs is children's literature. The verbs in these stories allow the reader to envision the action in the same manner that the writer intends. The job of a children's author, after all, is to build the beginning reader's vocabulary, and these authors don't do this with *am, is, are, was, and were*. And they don't use *run* when they can use *scamper*. I discovered this when reading one night to our five-year-old daughter. For example, in this passage from *Forest Fire!* by Mary Ann Fraser, the reader is in the middle of the fire:

With the elk gone, a ground squirrel ventured from his burrow. Cautiously he scampered across the brown matted pine needles. Settling on a log, he sunned in one of the few shafts of light that found its way through the dense tree branches. Suddenly a gust of wind ripped through the trees. There was a sound of splintering wood. The ground squirrel leaped out of the way just as a lodgepole pine, killed by bark beetles, fell to the ground.

The verbs in this sentence convey pure action: *ventured, scampered, settling, sunned, found, ripped, was, leaped, killed, fell*. Only one *to be* verb in the bunch. But to see the power of Fraser's words better, I'll rewrite it in a much less interesting way:

With the elk gone, a ground squirrel left his burrow. Cautiously he ran across the brown matted pine needles. After choosing a log, he lay in one of the few shafts of light that found its way through the dense tree branches. Suddenly he heard a gust of wind in the trees. There was a sound of splintering wood. The ground squirrel jumped out of the way just as

a lodgepole pine, killed by bark beetles, fell to the ground.

Action-filled verbs are critical to the persuasive narrative in the statement of facts. Good verbs are subtly persuasive. For example, what Senator Larry Craig—he of the “wide stance” in the Minneapolis bathroom—termed his “glancing” into the bathroom stall, the government actually termed “looking” into the stall. A “glance” is quick, but a “look” implies something more deliberate, a meaning that suits the government's case. But beware of verbs that sound too overbearing. A judge might have balked had the government used a verb like “leered” or “glared.” In a recent case, an attorney used the phrase “in a recent letter, you complained that . . .” in a communication to opposing counsel. No one likes to be called a complainer, and using this verb instead of a simple “said” was too strong and could have angered the reader.

As I mentioned earlier, understanding good style means reframing how you perceive style: it's not what it looks like, but what it sounds like. Good writing has rhythm, or a recognizable pattern of sounds through time. Take, for example, Caesar's, “I came, I saw, I conquered.” The repetition of *I*, the alternate use of *c*, and the similarities of the initial vowels all create rhythm. Caesar did not speak English, of course. But he did say *veni, vidi, vici*, a phrase more euphonic than its English translation anyway.

Style-conscious writers take the time to listen to their words, to hear how the words roll off the tongue and create pleasure in the reader. The sounds on the page contribute to the stylistic power of their piece. This is why writers should read everything they write—everything—out loud. They'll catch repetition, awkwardly worded sentences, long sentences, fragments, and other examples of poor sentence construction. But they'll also catch tongue twisters and awkward sound combinations. For example, read this aloud: “The pact affected union workers directly connected with the election of the new leader.” Most readers are distracted by repetition of the *-ect* sound.

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As Corbett and Connors say, “The sentence that is difficult to enunciate is often a grammatically or rhetorically defective sentence.”<sup>9</sup>

Professional writers can learn a great deal from poetry regarding the impact that sounds have on the reader. Many poetic techniques can be an aid in persuasion. In *Approaching Poetry*, Peter Schakel and Jack Ridl write of the attempts that have been made “to associate individual vowel and consonant sounds with specific feelings or meanings: low vowels with power or gloominess; the nasal consonants (*m*, *n*, *ng*) with warm, positive associations (*mother*); *sn* with usually unpleasant things (*snake*, *sneer*); and *st* with strong, stable, energetic things.”<sup>10</sup> Pharmaceutical companies certainly do this, using sounds to their advantage when devising product names. They create names filled with vowels that keep the mouth open, a position associated with excitement or happiness. Think, for instance, of *Viagra* or *Allegra*.

Other techniques like alliteration can work for the legal writer, so long as they are not overused. A legal brief should not look like verse. Either assonance (repetition of vowels) or consonance (repetition of consonants) can be pleasing to the ear. They contribute to meaning by emphasizing the words in which the repetition appears and by strengthening the connection between these words. Alliteration is not the sole domain of poets. For instance, in *Profiles in Courage*, John F. Kennedy wrote, “Already American vessels had been searched, seized and sunk.”<sup>11</sup> The alliteration in the verbs adds urgency to Kennedy’s message by emphasizing the action.

Euphony is also the defining characteristic of nursery rhymes and children’s songs. In these cases, the iambic beat (stressed-unstressed pattern) aids in memory. We all know the line “Twinkle twinkle little star,” but try singing it this way: “Little star, twinkle twinkle.” Or this: “Twinkle, little star,

twinkle.” As you can see, rearranging the words alters the beat, making the phrase much less memorable (and much less fun). The latter two versions are no longer iambic, and the small change renders them unwieldy.

Besides variety, though, readers also like symmetry and consistent patterns. Proper balance in a sentence makes it more readable and natural sounding. Writers have a variety of ways to create balance in their sentences. Because we subvocalize (that voice in our head when we read silently), balance can come in the form of syllables as well as words.

One way of achieving balance is through antithesis, the use of parallel structure to emphasize contrast. In antithesis, the balance is in the sentence structure, not the syllables. John F. Kennedy once said, “United there is little we cannot do in a host of cooperative ventures. Divided, there is little we can do—for we dare not meet a powerful challenge at odds and split asunder.” There is antithesis in Kennedy’s words between *united* and *divided* and *little we cannot do* and *little we can do*. In his classic work *Rasselas*, Samuel Johnson wrote, “Marriage has many pains, but celibacy has no pleasures.”<sup>12</sup> Antithetical clauses roll off the tongue and leave the reader with a sense of finality.

When two grammatical elements are equal in structure and in length, this is known as isocolon. They make for phrases that resonate in the reader’s mind, which is why isocolons can be found in advertising slogans:

It takes a licking, but it keeps on ticking (Timex)  
I’m a Pepper, he’s a Pepper, she’s a Pepper, we’re  
a Pepper, wouldn’t you like to be a Pepper, too?  
(Dr. Pepper)

Isocolons have also been used in literary exploits:

The louder he talked of his honor, the faster we  
counted our spoons. (Ralph Waldo Emerson,  
*The Conduct of Life*)<sup>13</sup>

<sup>9</sup> Corbett & Connors, *supra* note 2, at 363.

<sup>10</sup> Peter Schakel & Jack Ridl, *Approaching Poetry* 119 (1997).

<sup>11</sup> John F. Kennedy, *Profiles in Courage* 176 (2003).

<sup>12</sup> Samuel Johnson, *Rasselas, Prince of Abyssinia* 76 (2007).

<sup>13</sup> Ralph Waldo Emerson, *The Conduct of Life* 211 (AMS Press 1968) (1860).

Understandably, some readers fret at the prospect of isocolons in legal writing, especially when presented with advertising jingles and impressionist writers as examples. But isocolons, given their repetition and structure, are naturally euphonic. Read Emerson's quote aloud: the rhythm makes his words almost lyrical. This is one of the reasons why Emerson is so often quoted. Sure, the transcendental content of his writings is useful, but few writers approach his grace. Isocolons make it much more likely that what you write will be memorable, and that's a good thing for any lawyer whose brief is only a small part of a judge's weekly readings.

In a strict sense, you can also achieve balance by constructing sentences that contain clauses with an equal number of syllables. This can be done in two ways: with two clauses of equal length (*The police looked for the suspects, but they were nowhere to be found*), or with an opening and closing clause of equal length. Jack Hart gives us this example from a story in the *Washington Post*: "Sirhan Sirhan, who wrenched aside the 1970s with the force that history gives only to political assassins, wants to go home." In this sentence, the dependent clause in the middle is bookended by two phrases that each contain four syllables. The subordinate clause, in Hart's words, "acts like a fulcrum by supporting the parallel elements at the end."<sup>14</sup>

Ernest Hemingway told George Plimpton that he rewrote the ending to *A Farewell to Arms* 39 times for the simple reason that he "wanted to get the words right." While no attorney has the time to rewrite anything 39 times, Hemingway's point still applies: achieving a mastery of style involves revision, which often can mean rewriting. Within the confines of time, writers must be willing to rewrite something until it sounds good. But good style is paradoxical: it is often about ensuring that the reader does not recognize it. In other words, good prose writers do not draw attention to their style. Once the audience becomes consciously aware of a writer's stylistic techniques (*I love that*

*alliteration!*), they become sidetracked, focused more on technique than content. In the seamless and stylistic world that Emily Hiestand describes, style is integral to the writer's idea, helping to usher it off the page and into the reader's consciousness. Excessive alliteration, or an abundance of short sentences, will draw attention from the idea being posited to the words themselves on the page—an idea that only New Critics could love.

Judges read a lot. A whole lot. And I can't imagine that archaic and formulaic writing is a welcome proposition to anyone who reads as much as they do. Attorneys, then, should focus on prose that is engaging and lively.

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## Another Perspective

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<sup>14</sup> Hart, *supra* note 8, at 133.