

“In fact, if a brief or memo or letter is to hold its reader’s attention, the prose should have enough variety, enough rhythmical life, to help the reader stay alert.”

THE SUBTLETY OF RHYTHM

BY STEPHEN V. ARMSTRONG
AND TIMOTHY P. TERRELL

Steve Armstrong is Director of Career Development at Wilmer, Cutler & Pickering, a law firm based in Washington, D.C. He is a former English professor and journalist. Tim Terrell is Professor of Law at Emory University in Atlanta, Ga., and former Director of Professional Development at the law firm of King & Spalding in Atlanta. Together, they are the authors of Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing. Its second edition was published by the Practising Law Institute in November 2003. They are regular contributors to the Writing Tips column in Perspectives.

Compared to painting, writing suffers from a terrible aesthetic disadvantage. To the eye, pictures offer the immediate and unmistakable pleasures of movement and variety. Writing, in contrast, plods dismally and interminably across the page, a string of black marks on white paper, one word after the next without variation or escape. By its nature, it is monotonous.

Most legal writers are either oblivious to this disadvantage or have long since stopped struggling against it. If prose is by definition the tedious march of sentences across the page, so be it. Thus, they are unabashed when they perpetrate paragraphs as rhythmically boring as this one:

The conflict, moreover, involves an important question of law on which a uniform nationwide rule is essential. For example, it would be intolerable for the minimum wage provisions to have different applications in different regions of the country. In the same way, it would also be intolerable for there to exist in some states but not others a judge-made exception to the priority of a secured creditor’s perfected lien under the UCC. The continuing inconsistency on these matters could have serious economic consequences because creditors would be reluctant to finance businesses in regions where their liens may not enjoy true priority.

This paragraph has the rhythmical characteristics of most legal prose. Each sentence is longer than the previous one. There is almost no internal punctuation. And, when there is some, it shows up in the same place: near the beginning.

Legal writing doesn’t have to be so monotonous. In fact, if a brief or memo or letter is to hold its reader’s attention, the prose should have enough variety, enough rhythmical life, to help the reader stay alert. That variety is more than a defense against the reader’s ever-lurking boredom. It is also a subtle but powerful method of adjusting the emphases of your prose, so that it does a more precise, nuanced job of indicating to readers what is most important and what is less so — without resorting to the crudities of underlining and italics.

Many of your students may be inclined to believe that the skill to write rhythmically interesting prose is so much a matter of inborn talent that they shouldn’t even aspire to mastering it. They are wrong, of course. The basic methods are relatively simple.

The first step: Vary the lengths of your sentences.

The second step: Vary the internal structure of the longer sentences. You can do this in three ways:

- Create pauses of slightly different lengths by using different kinds of punctuation: a dash slows a reader down a little more than a semicolon, which in turn creates a longer pause than a comma.
- More important, vary the number of words between the pauses.
- Vary the complexity of the syntax. The more complex it is, the more it will rely on subordinate clauses and phrases that interrupt the sentence’s flow.

Here is an example, from Churchill’s *History of the Second World War*, of these methods at work:

We must take September 15 as the culminating date. On this day the Luftwaffe, after two heavy attacks on the 14th, made its greatest concentrated effort in a resumed attack on London.

It was one of the decisive battles of the war, and, like the Battle of Waterloo, it was on a Sunday. I was at Chequers. I had already on several occasions visited the headquarters of Number 11 Fighter Group in order to witness the conduct of an air battle, when not much happened. However, the weather on this day seemed suitable to the enemy and accordingly I drove over to Uxbridge and arrived at the Group Headquarters. ...

The variation in sentence length is obvious. But look also at the variation in syntax between the second and third sentences, on the one hand, and the fifth and sixth. In the former, Churchill goes out of his way to interrupt the sentences: Notice the interruption between the second sentence's subject and verb and, in the third sentence, the choppy rhythm in the middle. In the fifth and sixth sentences, he creates a quite different effect. In the fifth, the only internal punctuation comes near the end. There, instead of interrupting the sentence dramatically, he prepares for an ending that is anticlimactic in structure as well as content. In the sixth, to pull us quickly through the sentence, he allows himself a casual syntax, built around two "ands," that high-school English teachers warn against.

The variations in rhythm do more than keep us alert. Churchill forces us to slow down, almost to stumble, where the content is dramatic and deserves close attention. Then, when he moves on to less important material, he relaxes the syntactic tension and allows us to speed up. A superb job, and superbly unobtrusive.¹

Now an example from a lawyer, though one equally famous—or, to some tastes, notorious—as a writer. Here is Justice Cardozo's opening to *Palsgraf v. Long Island R.R.* As in the previous example, the variations in rhythm are not random, but help to reinforce the substance. And they result from the same techniques that Churchill used: varying the lengths of sentences and varying their internal structure.

Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package

¹ This example is drawn from Richard Lanham's *Style: An Anti-Textbook* (1974). Lanham takes the longer passage from which these sentences come as the occasion for a detailed, illuminating analysis of the "music" of Churchill's prose.

was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform many feet away. The scales struck the plaintiff, causing injuries for which she sues.²

Note in particular the sentences after the word "moving"—how their choppiness mirrors the chaotic movements being described. And the very short "fireworks" sentence near the end, with its verb at the sentence's end, is a masterful example of nonidiomatic syntax that draws us up short.

Both Churchill and Cardozo write a prose that has a distinctive flavor and is more "literary" than most legal prose. Your students probably shouldn't be encouraged to emulate them, at least not in their early years as lawyers. Can you teach them to use these techniques without their being accused of literary affectations? Of course. They may have to limit the range of their rhythmical effects so their style does not draw attention to itself. But there is still room for skill.

Let's return to the example with which we began. If you were to give this to your students as an editing exercise, their goal would be not only to improve the rhythms, but to use the rhythms to underline what matters most about the content. Here's one possible result:

Moreover, the conflict involves an important question of law on which a uniform nationwide rule is essential. It would be intolerable, for example, for the minimum wage provisions to be applied differently in different regions of the country. Similarly, it would be intolerable for courts in some states, but not in others, to grant exceptions to the priority of a secured creditor's perfected lien under the UCC. This inconsistency would do more than inconvenience specific

² 248 N.Y. 339 (1928). Cardozo's opinions have generated a vast commentary. For one example of a very close reading of *Palsgraf* and another famous Cardozo opinion—*Hynes v. New York Cent. R.R. Co.*—see Richard Weisberg, *Poetics* (1992).

“Both Churchill and Cardozo write a prose that has a distinctive flavor and is more ‘literary’ than most legal prose.”

“This version is not flashy, but it is much more effective.”

creditors. In a region where creditors are reluctant to finance businesses because their liens may not enjoy true priority, the economy could suffer serious economic consequences.

In the revision, the editor has made two changes:

- More variety in the lengths of sentences—not a lot, but just enough to make a difference. In particular, note the relatively short fourth sentence.
- More variety in the sentences' structure. Punctuation now shows up occasionally in the middle of a sentence, not just at the beginning. And it is used to emphasize what is important. In the second sentence, we are forced to pause after “intolerable.” In the third, the short phrase “but not in others,” separated from the rest of the sentence by commas, highlights the disparate results that are central to the paragraph's argument.

This version is not flashy, but it is much more effective. And its effects are more than cosmetic: They refine the content, by sharpening the play of nuanced emphasis that should be part of how we think, not just how we write.

© 2004 Stephen V. Armstrong and Timothy P. Terrell