LEGAL WRITING 201

30 SUGGESTIONS TO IMPROVE READABILITY

OR

HOW TO WRITE FOR JUDGES, NOT LIKE JUDGES

JUDGE MARK P. PAINTER

OHIO FIRST DISTRICT COURT OF APPEALS

Legal Writing 201

JUDGE MARK P. PAINTER
OHIO FIRST DISTRICT COURT OF APPEALS
TAFT LAW CENTER
230 EAST NINTH STREET
CINCINNATI, OHIO 45202
513-946-3444 – FAX 946-3411
mpainter@cms.hamilton-co.org
www.judgepainter.org

LEGAL WRITING 201

JUDGE MARK P. PAINTER

INTRODUCTION TO LEGAL WRITING

Some legal writing texts start out by explaining how legal writing is *different* from other writing. But it should not be. While certain documents—complaints, briefs, deeds—may have a standard *form*, their content should be in plain English.

Most legal writing is atrocious. Fred Rodell, Dean of Yale Law School before most of us were born, had it right when he said, "There are two things wrong with most legal writing. One is style. The other is content." This was in a fascinating article, *Goodbye to Law Reviews*,[1] which should be assigned reading for all law students.

Where did we learn to write? Grammar school is certainly not that any more, but we learned rudimentary rules in grade school. Unfortunately, some of those "rules" were not rules at all. The grade-school teacher who told you not to start a sentence with *and* really mean not to write "I have a dog. And a cat. And a parakeet." As we will discuss later, the use of "and" and "but" to begin a sentence is one mark of good writing.

Some of us honed our writing skills in high school and college. We learned from reading examples of good literature, and other writing, from journalistic to persuasive. Unless we fell victim to academic-jargon illiteracy (a subject for a separate treatise), we usually got better with practice. Though we may still have been handicapped by some false rules from grade school, some of us became at least passable writers before we entered law school. Then the roof fell in.

[1] (1936), 23 Va.L.Rev. 38.

One problem in law school is that we read older cases by dead judges. Of course, Cardozo, Holmes, and Jackson were great writers, but most judges are not, especially the older ones. I pulled out a random Ohio Supreme Court case from 1946, and quote the first paragraph:

> The appellant complains that the trial court erred in holding that an attorney at law representing a loan association in the distribution of the proceeds of a loan to be made by such association could refuse to answer questions concerning such distribution on the ground that to answer would disclose a confidential communication to his client; and that the trial court erred in holding that a garnishee ordered by the court to appear for examination as to his indebtedness to the judgment debtor was the witness of the judgment creditor and could not be called for cross-examination by the latter.[2]

This is not a terrible example, it is just random. But it could be translated in to plain English fairly easily. Restated, it could be two sentences, and contain about half of its now 100 words.

And it is not just that many judges write badly. Cases are selected for casebooks not because they are examples of good writing, or even clarity, but because they illustrate the precepts of law in that course. Even when edited, many of these cases are wordy, redundant, and confusing. Perhaps there is value for the law student in this situation—it is training to pick out the needle of law from the haystack of verbiage. But the act of reading all this Lawspeak and generally bad writing is to internalize it. If judges write this way, then it is the language of the profession—to be emulated.

The problem is compounded exponentially by the law student's encounter with other legal writing—leases, contracts, pleadings—some hardly changed from Norman times. Of course, there is also the red meat of the law, statutes. For sheer unfathomability, statutes are probably the champions. An Ohio example:

> Subject to division (B)(4) of this section, if, within six years of the offense, the offender has been convicted of or pleaded guilty to one violation of division (A) or (B) of section 4511.19 of the Revised Code, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a

[2] *Peoples Bank & Savings Co. v. Katz* (1946), 146 Ohio St. 207, 65 N.E.2d 708.

> municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, section 2903.06 or 2903.08 of the Revised Code, former section 2903.07 of the Revised Code, or a municipal ordinance that is substantially similar to former section 2903.07 of the Revised Code in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or a statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section 4511.19 of the Revised Code, the judge shall suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than one year nor more than five years.[3]

Again, just an average example of drafting clarity. As we will see later, a 239-word sentence is unreadable, which should come as no news.

If the exposure to indecipherable writing in law school weren't bad enough, then the young lawyer ventures forth into the "real world" of law practice. I once made the mistake of teaching legal drafting, and one of my students took what I said to heart. She was working part-time for a big firm. She wrote a memorandum for a senior partner. It was returned with "make it more lawyerlike," i.e., more unreadable.

Old ideas die hard. Legal writing has been bad for a long time. For an entertaining and educational explanation, read Peter Tiersma's book, *Legal Language*,[4] which give a fascinating history of how we got to the present state.

As lawyers, what we do most is write—Lincoln said that lawyers' time and advice are our stock in trade, but we express the advice in words. And we use our time in drafting, in communicating mostly by the written word. Sometimes, though, we fail to remember the first object of writing—to communicate.

Writing is a skill that can be learned—not that any of us necessarily can learn to be a Cardozo or a Holmes—but we can substantially improve our communication

[3] R.C. 4507.16(B)(2).
[4] Tiersma, Legal Language (1999).

by learning a few skills, a few tricks, and unlearning some "rules" that get in the way of good writing.

RULE 1. KNOW YOUR AUDIENCE

In all writing, the first rule is to know your audience. If you are communicating to a court, know the court—be familiar with the local rules and practices, the members of the court, and preferences of those individuals. The first question is all writing is: For whom are you writing?

Are you writing a brief for an appellate court, a trial brief, an opinion letter to in-house counsel, an opinion letter to a highly knowledgeable layperson, or an unsophisticated client?

If the judge is an expert on the law on your issue, then the facts are all the judge should need to process the argument—the facts become most important. If you are before a brand-new judge who practiced probate law for twenty years, then you will probably assume that the judge's knowledge of the law of your trade-secrets case might be less. Then, your brief should contain a more fundamental discussion of the law.

We are here concerned mainly with persuasive writing—drafting and legislation can present particular problems, but also should be in plain language. If you are to persuade a judge to rule in your favor, or an adversary's lawyer to pay you money or demand less money, you want to be persuasive. And the most important step in persuasion is communicating clearly what it is you are trying to persuade the other person to do.

RULE 2. FRONT-LOAD YOUR DOCUMENT—CONTEXT BEFORE DETAIL

As with all writing, organize your document to be front-loaded. That is, educate the reader as to what is coming. Put the important material up front. Readers understand much more easily if they have a context. Because readers understand new information in relation to what they already know, tell them a piece of new information that relates to their presumed knowledge. Then, build on that information with each new piece you add.

First, ask yourself how much your audience already knows about the facts and the law of your case. The answer is that the judge knows very little about the facts of your case. You have lived with your case for perhaps years, but the judge knows only what it set out in the pleadings until you explain what happened.

Strive to explain the case in a way that an average person can understand it. This is not always possible, but it should be your goal. Judges and lawyers are generally sophisticated readers, and can understand difficult prose if given enough time. But why would you want to make it difficult? Each extra step the reader must make in deciphering the facts of your case or the theory of your argument distracts from the force of your presentation. Make it easy for the reader.

Explain your case in the first two or three pages. If you cannot explain the essence of the dispute in three pages, you probably already have lost your first and best chance to keep the reader's attention. Have a non-lawyer read your fact statement and see if that reader can tell you what the case is about.

You must build a container—context—in the reader's mind, so when you pour in the facts and law of your case, the reader has the container to hold the information. Otherwise, it leaks out.

How do you read legal opinions? Too often, we have to skip to the end to find out what happened. An appellate opinion should be written so that the first paragraph or two tells you what the case is about and the outcome.

One reason we put important points up front is we need to put context before details. The reader learns by building on prior knowledge. If the reader starts with no knowledge of your case—which is generally true—you have to give them everything. Do not start out giving facts about your case without giving the context. Tell the reader what kind of case it is. And the most important part of putting context before detail is framing the issue—letting the reader know what the case is about. And put that right up front.

RULE 3. FRAME THE ISSUE IN FEWER THAN 75 WORDS

The most important part of your trial or appellate brief, or even of a memorandum to another lawyer, is framing the issue. What is the question you are trying to answer for the court or the other lawyer? What do you want the court to decide?

Do not start writing your brief or memo until you have a succinct statement of what the case is about. And you must do this in 50-75 words. If you can't explain the case in 75 words, you do not understand it very well, and neither will your reader. Too often I have seen cases go all the way to appeal and still the lawyers haven't figured out what the case is about.

Put your issue statement right up front, preferably in the first paragraph of your brief or memo.

> "Paula Jones was fired from her job with Environmess, Inc. because she consulted a lawyer about a possible slip-and-fall case against an Environmess client. If Ohio workers may only enter the courthouse in fear of losing their livelihood, they cannot exercise any of their legal rights. But Ohio law mandates that the courthouse door must remain open." (57 Words)

A short, plain statement of the issue tells the reader what the case is about, and provides context for your discussion that follows.

RULE 4. STATE THE FACTS SUCCINCTLY

Remember that you have already put the issue up front in 75 words or less. Then in your facts statement, you have to explain the case totally.

You have already told the reader what the issue is and generally what kind of case it is in your 75 word—or 57 word—statement. Then expand on that. After you have done your short statement of facts, you weave them into the discussion section of your opinion—and you can add and expand there if you need to. Your first statement is to give context—a roadmap.

Be concise. If you have had some experience writing media copy, you will have learned that you can say what you need with fewer words. The fewer the words, the more memorable the point:

- "I have nothing to offer but blood, tears, toil and sweat."
- "I have a dream."
- "Where is the beef?"

RULE 5. AVOID OVERCHRONICLING—MOST DATES ARE UNIMPORTANT

There is nothing wrong with stating the facts in chronological order. Your initial outline of the case should list all dates. But when you write your brief or memo, do not fall into the habit of starting every sentence with a date.

Avoid overchronicling. Too many briefs start out by reciting a chronology of facts: "On March 23, 1999, this happened, then on May 6, 1999, this happened." This approach confuses the reader, because we don't know what facts are important, and what, if any, dates we should remember. As a general rule, most dates are not important. Unless an exact date is important, leave it out. Instead, tell us what the case is about—only the material facts, and why they are important.

Say “in June” rather than “on June 14, 2000,” or worse, “on or about”—this is not an indictment. Tell what the case is about—only the material facts and why they are important.

RULE 6. HEADINGS ARE SIGNPOSTS—THEY SHOULD INFORM

As part of the “container,” have headings that tell the reader what is coming. If possible, headings should convey information. “Facts” conveys nothing. “The Fire and Aftermath” tells the reader the nature of the facts that are coming. Headings are signposts that guide the reader. If the legal argument portion of your opinion is five pages, you may not need to break it up; but if it is longer, separate it into numbered headings.

Headings do not just give context, they also signal the reader when to safely take a break. The reader needs breaks in digesting complex material. Separate the parts—and subparts—into headings.

RULE 7. WRITE SHORT PARAGRAPHS

Short paragraphs give the reader a chance to pause and digest what has gone before. If you put three or four sentences with new information in each paragraph, that is enough.

And remember each new piece of information should build on the old. You have probably seen where paragraphs are diagramed so that each sentence refers back to something in the last sentence. That is called building on context—building on prior knowledge. We will talk a bit more about sentence length and structure later.

RULE 8. FORM IS IMPORTANT—MAKE IT LOOK GOOD

Obviously, the substance of the case is most important—but to communicate the substance, use the best form possible.

It is so much easier nowadays to make the document look good. Remember the old days of typewriters—there were only two type styles—and margins were difficult to change. Now, our documents can look great!

Just about the most unreadable font is `Courier`. We sometimes spend thousands of dollars in technology and make our opinions and orders look like they were typed on a 1940 Underwood.

Always use a serif type for text—because the serifs direct the reader's eyes to the next letter. At least in America—there are some contrary statistics for Europe (probably as a result of history)—a serif type is best for text. Times New Roman is the standard now. Use it, or a similar typeface.

A non-serif, or sans serif, type is good for headings because it directs the reader's eyes downward to the material following the heading. Ariel is a common sans-serif type.

RULE 9. CHECK YOUR DOCUMENT CAREFULLY

Check every page of every paper that leaves your desk.

Should we really have to make this into a rule? I think so. It is amazing how many times I see briefs with pages upside down or in the wrong order—or missing or blank pages. It certainly breaks up the flow of your argument. Your clerical staff may be good, but they are capable of mistakes.

RULE 10. KEEP IT SHORT—THE PAGE LIMIT IS YOUR FRIEND

Lawyers writing for most courts, especially appellate courts, have a page limit imposed upon them. Most lawyers hate the page limit.

The page limit is your friend; it requires you to refine your argument. You must strive to write succinctly. It is much harder to write a short brief than a long one. Too much space is a temptation to write all (or more than) you know about the subject. Make every word count, and your document will be much more convincing—the reader might think that you know *more* than you wrote, not less.

At least in our appellate court, we rarely write more than fifteen pages, and most are shorter. There may be a complex case that takes up to thirty pages, but I don't remember any more than that. And we have to explain both sides' arguments.

RULE 11. USE NO TALKING FOOTNOTES

If something is important enough to be in a footnote, it is important enough to be in the text. Footnotes detract from readability. Encountering a footnote is like going downstairs to answer the door while making love. Don't let footnotes swallow the page from the bottom, as in a law review article. Your goal is to communicate, not build a resume. If you make your document look like a law review article, it will be just as unreadable!

Many years ago, courts used no footnotes. The only proper use for footnotes is to give citations, rather than having citations in the middle of a sentence. Proper use of footnotes is for reference only. If something is truly parenthetical, but you believe it needs to be mentioned, use parentheses.

RULE 12. CITATIONS GO IN FOOTNOTES

We lawyers long ago forfeited much readability by including cites in the body of the text, rather than in footnotes. Cluttering up your document with jumbles of letters and numbers makes it almost totally unreadable. This practice should cease, especially now that footnoting references is simple.

Citations belong in footnotes. You will be amazed at the increased readability. Four of our six First District judges are now doing this in opinions.[5] The practice is spreading throughout most appellate districts, for which I claim some credit, having given a presentation to most of my colleagues in June 2001. I cannot overemphasize how much better it is to put your citations in footnotes.

But make sure you put *only* citations in footnotes; that is, no "talking footnotes." The reader must know that she does not need to read the footnotes—they are for reference only. Then, the constant glancing up and down is not necessary. "If footnotes were a rational form of communication, Darwinian selection would have resulted in the eyes being set vertically…"[6]

RULE 13. USE THE OHIO FORM OF CITATION

Use the Ohio Supreme Court system of citation. For whatever reason, Ohio has its own form, *not* the Uniform System. (The "Bluebook" is only used when the Ohio form doesn't cover an issue—remember the *sixteenth* edition is now out and makes some important changes.) Ohio's system is not wholly different—the most immediately apparent change is that the date is before the reporter, e.g., *Blanton v. Internat'l Minerals and Chem. Corp*. (1997), 125 Ohio App.3d 22, 707 N.E.2d 960. Note that there is no space between App. and 3d—the period serves as separation. If you do not have a copy of the Ohio formbook, the Supreme Court reporter's office will send one.

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[5] See, e.g., *Wood v. Donohue* (1999), 136 Ohio App.3d 336, 736 N.E.2d 556; *Nusekabel v. Pub. School Emp. Credit Union* (1997), 125 Ohio App.3d 427, 708 N.E.2d 1015.

[6] Mikva, Goodbye to Footnotes (1985), 56 U.Col.L.Rev. 647, 648.

Also, write R.C., not O.R.C. (We know it is Ohio.) Every reported case in Ohio is published in the Ohio Supreme Court form—your brief or memo should conform.

RULE 14. EDIT, EDIT, EDIT

Edit, edit, edit, and edit again. Typos, bad grammar, and misplaced paragraphs (which were not such a problem before computers) simply take away from your argument.

Keep a copy of Bryan Garner's excellent book, *A Dictionary of Modern Legal Usage*[7] at your side to answer grammar, syntax, and punctuation questions.

With new technology always comes new pitfalls—following the "spellcheck" or "grammarcheck" blindly leads to some weird words and constructions. If you have a staff member do the word processing, it is even more important to read every word. Spellcheck can substitute wrong words—spelled correctly, but not what you mean. You may mean "constitution," but spellcheck reads it as "constipation."

Those of us who do our own—or edit by computer—always do final edit—do not let your assistant do the final edit with spellcheck without proofing very carefully again.

Another hint is to program your spellcheck to highlight "trail" so you can determine if you actually mean "trial." This is probably the most common mistake we see—"the trail judge" was in error. Happy trails!

[7] Garner, A Dictionary of Modern Legal Usage (2 Ed. 1995). See, also, Williams, Style: Ten Lessons in Clarity and Grace (4 Ed. 1994); Gordon, The Deluxe Transitive Vampire (1993); and Garner's other, smaller book, Elements of Legal Style (1991).

RULE 15. WRITE SHORT SENTENCES—THE 1818 RULE, PART I

Write short, crisp sentences. What is the most underused punctuation mark in legal writing? The period. The most overused is easy—the comma.

More periods, fewer commas—sentence length should average no more than twenty words. Eighteen is better. Word processors have that feature. Read Cardozo (usually), Holmes, and Jackson—short, crisp sentences.[8]

Long sentences are especially difficult when strung together. Sophisticated readers can understand longer sentences—if they are properly constructed—but no one can wade through ten in a row. Break up the pace—follow a longer sentence with a short one.

Readability is the goal. Keep in mind that Will Rogers's all-too-often-true comment about legal writing:

The minute you read something and you can't understand it, you can almost be sure that it was drawn up by a lawyer. Then if you give it to another lawyer to read and he don't know just what it means, why then you can be sure it was drawn up by a lawyer. If it's in a few words and is plain and understandable only one way, it was written by a non-lawyer.[9]

RULE 16. USE MAINLY ACTIVE VOICE—THE 1818 RULE, PART II

Passive voice is not forbidden. Sometimes you do not need to name the actor—"Many books on this subject have been published." Or a smooth transition from one sentence to the next requires you to put the subject first. Or you might

[8] See e.g., *Fiocco v. Carver* (1922), 234 N.Y.219, 137 N.E. 309; *Meinhard v. Salmon* (1928), 249 N.Y. 458, 164 N.E. 545.

[9] Rogers, "The Lawyers Talking," 28 July 1935, in *Will Rogers' Weekly Archives* 6:243-244 (Steven K. Graggert ed. 1982), quoted in Shapiro, The Oxford Dictionary of Legal Quotations (1993).

want to hide the actor—"Mistakes were made;" "An accident occurred." But usually active is better; action is easier to understand.

In the schoolyard, "Johnny tried to hit me." Now, after law school, we would probably say, "An attempt was made by Johnny to assault me." Somehow, the attempt becomes the focus. This is called nominalization of verbs—taking a perfectly good action verb and turning it into a noun. Probably because we, as lawyers, categorize and name things, "assault" becomes a noun. "A tort was committed."

Hunt down passive voice and nominalization. If there is no good reason, put your sentence back the way real people would talk.

Rule 17. Use "But" and "And" to Begin Sentences

And do not be afraid to start sentences with "and" or "but." This signifies good writing. The reason your grammar-school teacher told you not to start a sentence with "and" was because you wrote, "I have a mother. And a father. And a dog." Use "but" rather than "however" to start a sentence, and see how much better it reads.

Rule 18. Distinguish Between "That" and "Which"

Use "that" restrictively, and "which" nonrestrictively. (In British English, which is used both ways.) The easy way to remember—which is preceded by a comma; that is not.

RULE 19. USE THE DASH, PARENTHESIS, AND COMMA FOR DEGREES OF EMPHASIS

Though you should avoid cluttering up your document with too many incidental comments, sometimes they fit nicely. A dash provides the greatest emphasis—it is a stronger break—next in degree is the parenthesis, then the comma.

RULE 20. ONE WORD IS USUALLY ENOUGH

Do not use two or three or four words for one ("devise and bequeath"; "grant, bargain, and sell"; "right, title, and interest"; "make, ordain, constitute, and appoint"). This goofiness originated with the Norman Conquest, after which it was necessary to use both the English and French words so that all could understand. Most of us now understand plain English. A related tendency of lawyers is to use many words when one is more understandable ("sufficient number of"= enough, "that point in time" = then, "for the reason that" = because). A longer list is in the Appendix.

Don't write "filed a motion" unless the filing itself has some significance. Write "moved." Do not write "On October 13, 1995, plaintiff-appellant filed a timely appeal to this honorable court." Again, unless the timeliness or date (or the honor of the court) is in question. You have used so many words for nothing. "Smith appeals" is sufficient, and even that is obvious, and hence unnecessary. Don't write "filed of record." Write "filed." Where else would it be filed?

RULE 21. NO PARENTHETICAL NUMERICALS

Especially irritating is the practice of spelling out numbers and then attaching parenthetical numericals—a habit learned when scribes used quill pens to copy documents. The real reason for this is to prevent fraud, by making it difficult to

alter documents. An opinion that states "There were two (2) defendants and three (3) police officers present" is extremely hard to read, and also looks silly. Unless you are writing your opinion in longhand—and unless you believe the parties will alter your numbers—skip this "noxious habit."[10]

RULE 22. HYPHENATE PHRASAL ADJECTIVES

The reader is confused by nouns acting as adjectives, or two adjectives together modifying one noun. Always hyphenate phrases like "wrongful-discharge suit," or "public-policy exception."

RULE 23. ALWAYS QUESTION "OF"

Write Ohio Supreme Court, not Supreme Court of Ohio. Question prepositional phrases—"of"—"from." There is nothing wrong with possessive. Write "the court's docket," not "the docket of the court."

RULE 24. USE THE SERIAL COMMA

In a list of three or more, always insert the serial comma. Some writers insist on omitting the last comma, before the "and." Do not omit the last comma—doing so can cause misinterpretation.

[10] Garner, A Dictionary of Modern Legal Usage (2 Ed. 1995) 606.

RULE 25. AVOID UNNECESSARY PREAMBLES

Cut the useless preambles. Unnecessary preambles can weaken or hide the point they introduce. Some unnecessary preambles:

- It is important to add that . . .
- It may be recalled that . . .
- In this regard it is of significance that . . .
- It is interesting to note that…

RULE 26. PURGE LAWSPEAK

Eschew legalese. "Hereinafter," "aforesaid," and the like do not add anything but wordiness and detract from readability. Many studies show that legalese is the number one complaint of appellate judges and clerks. Use Latin phrases sparingly. A few—*res ipsa loquitur*, *respondeat superior*—are perhaps acceptable, but do not litter your opinion with what Daniel Webster called "mangled pieces of murdered Latin."

Cut out "such," such as "such motion." "The" or "that" almost always works. "Pursuant to" usually may be translated as "under."

RULE 27. THE PARTIES HAVE NAMES

Have you ever represented a client without a name? Only if you represented Prince during a certain period. The parties have names.

Don't go through your whole brief calling parties plaintiff-appellant and defendant-appellee, or the like. Appellant would be enough, but it is better to call the parties by name. When we use procedural titles, the reader must translate to

understand what we mean. The procedural titles chance throughout the case, but the names remain the same. Using names also humanizes your client—even corporate names, e.g., "Smithco," sound much more human that "Plaintiff-Appellant and Cross-Appellee."

Be sure to be consistent and not switch back and forth between "appellant," "Jones" and "plaintiff." I recently read a brief that said "Defendant-Appellant Mary Jones (hereinafter usually referred to a Jones)." Usually? Did that mean she was sometimes Barbara Smith? Gasp.

And just write—once—"Plaintiff-Appellant Amalgamated Widgets of North America, Inc. (Amalgamated)," not "hereinafter called"—no lawspeak. And if your party is John Smith, you may safely call him Smith without the first time using "John Smith (Smith). Remember, the parties have names, not procedural titles.

RULE 28. USE QUOTATIONS SPARINGLY

I have seen too many briefs that are comprised of strings of quotations and very little else. You should explain how the cited cases support your theory of the case. Do not use lengthy quotations—a few lines at most.

No one reads long block quotes. People skip that single-space block and go on. Unless the case you are quoting from is exactly on point (which is very seldom true), just quote the most relevant and persuasive part. And do it in the text if you can. The Ohio Supreme Court format puts all quotes in the text. No matter how long. Just remember, long blocks are not read.

Lead into the quote with your paraphrase of what the quote says. The reader will actually read it to see if you are telling the truth. "The Ohio Supreme Court has held that a defendant has no due process rights."

RULE 29. USE PERSUASIVE LANGUAGE

Use persuasive language. If you can't explain your case, how can you expect the readers to understand it? Similes or metaphors are very effective to illustrate your analysis.

In one recent case, the issue was whether a pizza delivery driver was an employee or an independent contractor. One side argued that, because he paid for his own gas and used his own vehicle, and could use whatever route he wished, he was an independent contractor. The other side stated that servers in the restaurant, admittedly employees, also were not told which way to go between tables to deliver their orders, and used their own shoes. The driver was simply a "waiter on wheels." That phrase found its way into the opinion.[11]

RULE 30. CONTINUE YOUR RESEARCH

Continue your research! You might file a memorandum or a brief months before it is argued before the court. Check every citation periodically, and again the day before the case is argued. It has happened more than once in my tenure that a new Ohio Supreme Court case has appeared in the interim.

[11] See *Iames v. Murphy* (1995), 106 Ohio App.3d 627, 666 N.E.2d 1147.

BIOGRAPHY

JUDGE MARK P. PAINTER was elected to the Ohio First District Court of Appeals in November 1994, and re-elected without opposition in 2000. For the previous 13 years, Judge Painter served on the Hamilton County Municipal Court.

A Cincinnati native, Judge Painter attended the University of Cincinnati, where he was elected Student Body President in 1969, receiving a B.A. in 1970, and a J.D. in 1973. He practiced law for nine years before becoming a judge.

Judge Painter is recognized as one of the outstanding legal scholars in Ohio, and, as a municipal court judge, was the most-published trial judge in the state. To date, 215 of Judge Painter's decisions have been published nationally. He is author of *Ohio Driving Under the Influence Law* (WestGroup, now in its tenth edition, 2001), the only legal textbook on DUI in Ohio. Judge Painter has also authored 28 articles for legal journals.

As an Adjunct Professor at the University of Cincinnati College of Law, Judge Painter has taught Agency and Partnership since 1990. He teaches DUI law, appellate practice, legal writing, and legal ethics to judges and lawyers throughout Ohio. He has lectured at more than 80 seminars for, among others, the Ohio Judicial College, the Ohio Association of Criminal Defense Lawyers, the Ohio Academy of Trial Lawyers, and the Ohio Continuing Legal Education Institute.

Judge Painter has served as a Trustee of the Cincinnati Freestore/Foodbank, the Cincinnati Bar Association, the Friends of the William Howard Taft Birthplace, and the Citizens School Committee. He is a Master of the Bench Emeritus of the Potter Stewart Inn of Court, and served for three years as a member of the Ohio Supreme Court Board of Commissioners on Grievances and Discipline. Judge Painter is a member of the Cincinnati, Ohio State and American Bar Associations, the American Society of Writers on Legal Subjects (Scribes), the Plain Language International Network, the Legal Writing Institute, Clarity, and the American Judicature Society.

APPENDIX

WORDS AND PHRASES

BAD	***GOOD***
the means by which	**how**
entered a contract to	**contracted**
filed a counterclaim	**counterclaimed**
filed a motion	**moved**
filed an application	**applied**
adequate number of	**enough**
for the reason that	**because**
in the event of	**if**
in light of the fact that	**because**
notwithstanding the fact that	**although**
notwithstanding	**despite**
cause of action	**claim**
in order to	**to**
at this point in time	**now**
until such time as	**until**
whether or not	**whether (usually)**
during the month of May	**in May**

Words and Phrases

(CONTINUED)

BAD	***GOOD***
by means of	**by**
as a consequence of	**because of**
a distance of five miles	**five miles**
at a later date	**later**
is of the opinion that	**believes**
effectuate	**cause**
in violation of	**violates**
is violative of	**violates**
made a complaint	**complained**
utilize	**use**
a period of a week	**a week**
made application	**applied**
made provision	**provided**
it is contended by plaintiff	**plaintiff contends**
with regard to	**about**
in connection with	**with**
performed a search on	**searched**

WORDS AND PHRASES

(CONTINUED)

BAD	***GOOD***
each and every	**either one**
provide responses	**respond**
offer testimony	**testify**
make inquiry	**ask**
provide assistance	**help**
place a limitation upon	**limit**
make an examination of	**examine**
provide protection to	**protect**
reach a resolution	**resolve**
bears a significant resemblance	**resembles**
reveal the identity of	**identify**
makes mention of	**mentions**
are in compliance with	**comply**
make allegations	**allege**
was in conformity with	**conformed**
to effect settlement	**settle**

MANY WORDS WHEN ONE WILL DO

OLD ENGLISH	LATIN	OLD FRENCH
Rest	**Residue**	**Remainder**
Free		**Clear**
Will	**Testament**	
Final	**Conclusive**	
Fit		**Proper**
Give, Bequeath		**Devise**