

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Articles in Law Reviews & Other Academic Journals

Scholarship & Research

2009

Never Too Late to Go Home Again

David Spratt

Follow this and additional works at: https://digitalcommons.wcl.american.edu/facsch_lawrev

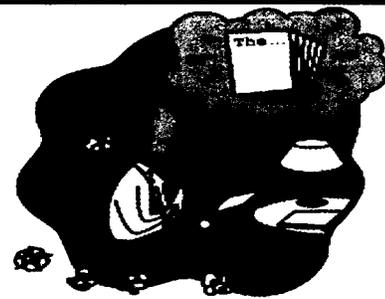


Part of the [Law Enforcement and Corrections Commons](#), and the [Legal Writing and Research Commons](#)

WRITER'S BLOCK

NEVER TOO LATE TO GO HOME AGAIN

BY DAVID H. SPRATT



In the life of your resident columnist, what once was old is new again! About four years ago, in the days before I sat perched in my Ivory Tower, I wrote an article for this journal called "Writing Like a Contemporary (and Effective Lawyer): The Joys and Pitfalls of Legal Writing." Today, as I pondered what I should write about in this column (and admittedly suffering from writer's block—ah, the hypocrisy!), I decided to revisit some of the points that I made in that article. Perhaps some of you will find this column oddly familiar (having saved my previous article as a treasured resource); others, and hopefully most of you, will find some new tips or refreshers on how to improve your own writing.

1. Take a Sudafed: Get Rid of Throat-Clearing!

Ever witness a speaker catch a frog in her throat right before she starts to speak? She clears her throat several times as you sit there and wonder when she will start speaking. Finally, you reach in your briefcase to offer her a Sudafed, and she begins her presentation.

As legal writers, many of us suffer from the same allergies. Throat-clearers, or unnecessary preambles, are introductory phrases that communicate little more than "I'm getting ready to say something." Throat-clearers prevent you from getting to the point as quickly as you could. Rid your memos, briefs, and other documents of throat-clearing phrases, words that can be removed without sacrificing content; many of these phrases begin with the word "it" and end with the word "that."

"It is obvious that"/"It is clear that"/"It is evident that": If the point is evidently clear and obvious, then the message should jump off the page, allowing the reader to understand the point without an unnecessary preamble.

"It is interesting to note that": The point might be earth-shatteringly amazing to you, but if you make your statement clearly and concisely, your reader will determine the true level of interest.

"I am of the belief that": Shocking, I know, but as lawyers, many of us like to hear ourselves talk and see ourselves write. In reality, neither opposing counsel nor a judge care about what we personally believe, instead preferring to focus only on what the law requires.

2. Avoid Legalese: Follow *Said* Rule!

Wherefore counselors heretofore drafted legal instruments using an esteemed vocabulary a layperson could not comprehend, said practice is quickly becoming obsolete. Translation: Although lawyers used to draft documents using words and phrases a client could not understand, this practice is becoming outdated.

A contemporary reader doesn't have any use for a document that sounds like it was written by a wigged barrister hunched over a Dickensian desk with a quill pen!¹ A lawyer's words should not differ without reason from the words used in ordinary, everyday English.²

Remember, good writing clarifies and poor writing confuses and creates ambiguity.

3. Remove Redundancies.

If one word says it best, don't clutter up the text with additional words that mean the same thing. Eliminating words that have similar or identical meanings is yet another way to combat the page requirements imposed by your local court. Delete unnecessary words from your writing! If there is no difference between two words, only use one of them.

Full and complete: If something is full, isn't it complete?

Null and void: How could something be null without being void?

Each and every: If you followed each of these rules, wouldn't every rule have been followed?

Reason is because: Need I explain why?

4. Clean out the Clutter.

Lawyers have a propensity for using several words when one word will suf-

fice. Avoid multiple word prepositions, replacing them with the words that you would use in everyday conversation. Clumsy, convoluted words and phrases clutter up a lawyer's writing, making the points harder to follow (and annoy the reader). In fact, a very good friend of mine cringes each time she sees a writer use "in order to" and "in order for" instead of "to" and "for." Here is more clutter you can get rid of:

In the course of: during

In close proximity to: near

Concerning the matter of: about

Most of the time: usually

A large number of: many

For the reason that: because

In light of the fact that: because

In view of the fact that: because

Due to the fact that: because

Wow! This column was easy. Even though I used a previous article as a jumping-off point, I found myself changing words and adding new text. Quite frankly, I found myself rewriting the article, ending up with a column very different from where I started. The writing process is recursive, as we always strive to make our writing better and better; with experience, we should rely less and less on past work product (but that topic is a subject for another, fully-original column).

As always, questions, comments, or suggestions are welcomed (even encouraged)!

NOTES:

1) Mark P. Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* 92 (2d ed. 2003).

2) Richard C Wydick, *Plain English for Lawyers* 4 (5th ed. 2005).

David H. Spratt is a professor at The American University, Washington College of Law, where he teaches Legal Rhetoric, Introduction to Advocacy, and Family Law Practice and Drafting. Professor Spratt practiced family law for ten years and is a former chair of the VBA Domestic Relations Section.