

# Emulating the Pros' Prose: Stylistic Consciousness

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Attorneys who spend their days and nights reading legal documents may assume without realizing it that legal arguments and fact statements are somehow divorced from the rest of the world and its vocabulary, that they cannot waste time reading outside the law. But this premise is flawed: legal issues revolve around real people and their questions, problems, and needs. To write effectively, legal writers must depend on a language and sentence structure whose essence derives from that larger world. Legal language is only another layer of the rich language and intricate structure that nonlegal prose can reinforce every time we read. Legal writers need to read about history, journalism, the classics, science, even economics, so that they can come in touch with the larger world again.

There's an old joke about a golfer who has a pronounced hook to his shots. He first considers taking lessons but decides instead to concentrate on his problem and practice frequently. He practices, all right, and develops such an unshakable hook that even his putts roll to the left. The point, obviously, is that practice without instruction does not enhance art; it merely solidifies initial problems. Legal writers who read only legal materials reinforce a dense and daunting style repeated by other legal writers who believe "that's the way it's always been."

Theorists still argue about whether writers learn by reading, by imitating others, or by trial and error. Learning may finally be the result of all these means. What I am suggesting is that legal writers take a conscious look at the writers they judge as good and try to

apply the successful stylistic techniques to legal writing. They might discover a fresh perspective, a technique that allows them to break the traditional formulas of idiosyncratic legal analysis.

## Avoiding Bulky Quotations

One continuing problem in legal writing is the bulky quotations that create major hurdles to reading. Although legal argument depends on authority, that necessity should not become an excuse to drop quotations into a text with no introduction or concluding discussion.

If that is a problem in your writing, you can look, for instance, to Annie Dillard, a naturalist-theologian-poet, to examine how she skillfully incorporates secondary material into a text that is finally her own, making frequent references to outside authority as the underpinning for her discussions. *Pilgrim at Tinker Creek* is a contemporary glimpse into nature, similar to Thoreau's *Walden*. If you get a chance to read Dillard's book, you will discover after only a chapter or two that you've been casually introduced to dozens of scientists, naturalists, philosophers, theologians, optometrists, and more. Look at two paragraphs from *Pilgrim at Tinker Creek*:

I open my eyes and I see dark, muscled forms curl out of water, with flapping gills and flattened eyes. I close my eyes and I see stars, deep stars giving way to deeper stars, deeper stars bowing to deepest stars at the crown of an infinite cone.

"Still," wrote van Gogh in a letter, "a great deal of light falls on everything." If we are blinded by darkness, we are also blinded by light. When too much light falls on everything, a special terror results. Peter Freuchen describes the notorious kayak sickness to which Greenland Eskimos are prone. "The Greenland fjords are peculiar for the spells of completely quiet weather . . . The kayak hunter must sit

in his boat without stirring a finger so as not to scare the shy seals away. . . . The reflex [of the sun] from the mirror-like water hypnotizes him, . . . and all of a sudden it is as if he were floating in a bottomless void, sinking, sinking, and sinking . . .” Some hunters are especially cursed with this panic, and bring ruin and sometimes starvation to their families.<sup>1</sup>

Dillard has used both van Gogh and Freuchen to develop her earlier point about darkness and light in such a way that the two direct quotations become a part of her text, an integral thread in her own fabric of expression. The quotations do not stand alone as mere book-and-letter summaries (as is often the case in legal writing); readers have no trouble moving from her textual observations to the explanatory quotations because the quotations add to what she has already said and anticipated.

Memorandum and brief writers can take a lesson here and compare their own abilities to incorporate secondary source material.

## Keeping Track of Great Prose

In the eighteenth and nineteenth centuries, people often carried pocket notebooks for recording observations, conversations, and interesting descriptions they picked up through reading. Later, they used these notes as material for their own writing. Nathaniel Hawthorne is an obvious example, with a notebook entry that describes his daughter at play in the woods; the scene appears almost verbatim in his description of impish Pearl in *The Scarlet Letter*.

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<sup>1</sup> ANNIE DILLARD, PILGRIM AT TINKER CREEK 21–22 (1974).

Perhaps it would not be a bad idea to borrow that habit — a thin spiral notebook fits easily into a jacket pocket or pocketbook. You could copy sentences from *The New Yorker* or novels, jot down conversations, and even have a place to keep those stray thoughts that strike you as genius but tend to fade before you can do anything with them. It is a variation on highlighting newspaper articles and books, a practice that may actually work for the well-organized writer. Unfortunately, most of us pile those original articles into stacks and maybe get around to hiding them even deeper inside a file cabinet. There, they remain out of sight and are too much trouble to retrieve. The notebook, on the other hand, keeps these jewels together and available for quick retrieval when writers need them.

Today's technology allows us to open a file on the computer and type in interesting examples of paragraphs and bits of sentences. My "Samples" file is a mishmash of thoughts on a variety of topics — but each sentence is crafted so that I can emulate the structure in presenting my own ideas.

## Legal Examples Using Nonlegal Patterns

In the paragraphs below, two legal writers have experimented with the style of authors beyond the world of law: they have taken a paragraph or sentence and rewritten it, retaining the word order and rhythm but replacing the history or science content with legal issues. The idea in the two experiments is to pattern a legal issue on some example of outstanding writing; I chose the outside references, and the two attorneys molded their ideas into the sentence pattern of the originals.

The paragraph below is from Patricia Nelson Limerick's outstanding book *The Legacy of Conquest*, which details the human story of the expansion of the American West:

Western history is a story structured by the drawing of lines and the marking of borders. From macrocosm to microcosm, from imperial struggles for territory to the parceling out of townsite claims, Western American history was an effort first to draw lines dividing the West into manageable units of property and then to persuade people to treat those lines with respect.<sup>2</sup>

You'll notice that the first sentence uses gerunds after the preposition, creating a rhythmic parallel (*the drawing, the marking*). The second sentence's structure develops with a string of introductory, parallel prepositional phrases: *from (large) to (small), from (large) to (small)*. The main clause develops through a second parallel: "first to draw lines . . . and then to persuade . . ." These lively coordinates establish a rhythm that marches the reader through the metaphor/reality she is defining.

Scot Powe, author of the multi-award-winning *American Broadcasting and the First Amendment* (1987), experimented with the same sentence structure applied to his topic of broadcast regulation, added a conclusion, and produced this model of legal writing for this article:

Broadcast regulation is a matrix of public service and localism. From the Fairness Doctrine to the allocation of television licenses, from Herbert Hoover to Jimmy Carter, broadcast regulation was a conscious policy first to maximize the public welfare by providing essential information and second to encourage national diversity through the celebration of local uniqueness. The matrix, however, is built on theoretical foundations that weaken significantly when they confront the laws of economics.

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<sup>2</sup> PATRICIA N. LIMERICK, *THE LEGACY OF CONQUEST* 55 (1987).

In his example, Powe maintains both the cadence and the coordination of Limerick's original two sentences. Look at the elements of the sentence: Powe's vocabulary retains Limerick's sophistication — but no one would complain about legal jargon or archaic language, because the words, although sophisticated, are grouped into easily understood units and thus convey readily available meaning. It is nonsense, then, to generalize that good legal writing always uses simple words — attorneys have a wide vocabulary and need only use it appropriately. The power and richness of the English language work together with the legal concept to produce memorable writing.

Powe's sentences, like Limerick's, are long — especially the second one — and complex. Here, good legal writing does not depend on short and choppy sentences for clarity but rather depends on frequent closure and visual cues to internal coherence. So legal writing need not slip to the lowest common denominator to be clear. Rather, sentences can contain sophisticated language and complex structure — if they are not replete with embedded, run-on clauses or archaic redundancies. This example is proof that legal writers, striving for clarity or precision, need not limit themselves to a restricted number of sentence structures; nor should they ignore their writing problems altogether under the excuse that changing their style would make their writing less succinct or precise.

A second example of writing that legal writers might benefit by reading is *The Lives of a Cell*. In this book a scientist, Lewis Thomas, has addressed a complicated topic, one full of abstractions and theory and minute detail; he has nevertheless created a book so informative that college students are asked to read it in both writing and biology classes:

[S]urely this is the toughest membrane imaginable in the universe, opaque to probability, impermeable to death. We are the delicate part, transient and vulnerable as cilia.<sup>3</sup>

Thomas creates these memorable sentences through the use of short descriptive clauses tacked to the end of the sentences after the nouns they modify and expand. The tough membrane is described at the sentence's conclusion, almost as a toss-in phrase, as *opaque to probability*. Then again, rather than the traditional conjunctive *and* to separate two adjectival descriptions, Thomas uses only the comma. That leaves the phrase *impermeable to death* out there all by itself. It is the lack of conjunction and the placement of the descriptions that are eye-catching; the recognition that membranes would not allow even death becomes all the more startling because the sentence in which Thomas explains it is also startling. The second sentence also catches us unaware: comparing humans to the hairs of the membrane, Thomas uses a traditional ellipsis to introduce the understood juxtaposition of the delicate cilia to us (*We are the delicate part [; we are as] transient and vulnerable as cilia*). The challenge to legal writers to create explanatory, vivid metaphors is no more overwhelming than it is to scientists.

Sanford Levinson, author of the thought-provoking *Constitutional Faith* (1988), used Thomas's passage as a pattern to develop his own two sentences concerning individual rights:

Surely the dominating impulse of the state is often to maintain its "security," an impulse at once impermeable to evidence that it is not threatened and exaggerating the probability of attack. Individual rights and ordinary human liberties are often too fragile to survive, as transient and vulnerable as delicate limestone that is worn away by the relentless pounding of mighty rivers.

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<sup>3</sup> LEWIS THOMAS, *THE LIVES OF A CELL* 3 (1974).

Levinson maintains the double modifiers after *impulse* but separates them with the traditional conjunction and then reinstates the omitted as in the second sentence to define the rights and liberties, “as transient and vulnerable as delicate limestone.” Levinson transforms Thomas’s original into an expanded literary metaphor. Legal questions involve the mighty, the powerful, the threatened, the angry, and the needed. Should not legal language echo that vitality? Levinson’s flourish may not be appropriate in a motion for summary judgment, but surely in the routine papers that flow in and out of law offices there is the *possibility* of lively prose.