

A Few of Wisdom's Idiosyncrasies  
and a Few of Ignorance's:  
A Judicial Style Sheet

Thomas Gibbs Gee

John Minor Wisdom, an uncompromising stylist and celebrated jurist, began accumulating the style sheet that follows many years ago and continues to revise it from year to year. At least ten years ago he was kind enough to give me a copy, and I have continued a similar process on my own. He bears no responsibility for my present version, which diverges from his rather widely in some areas. Needless to say, his has carried on and diverges a great deal from mine by this time (his, for example, includes the proper way to pronounce New Orleans).

I use this style sheet as a tool for my briefing clerks in their drafting of memoranda and proposed opinions. Having them read it over from time to time prevents my having to make the same small alterations again and again and, I like to think, has a broad and healthy influence on their writing in general and their legal writing in particular.

Indeed, it may not be excessive to claim that it assists their ability to reason. I am told that the best single test of intelligence is vocabulary; I suspect that this is because we all think in words. Sit down sometime and try to reason nonverbally! (Math does not count, being set out in its own language.) And how a broad and sound vocabulary does enliven existence: Doubtless it is possible to view a *cerise* sunset without knowing that one has done so, but I doubt that anyone has precisely experienced *diffidence* or *ennui* without knowing the term for it.

This style sheet does not purport to be a general compendium of style or usage; it is exactly what its title indicates:

a partial collection of things that I do not like to see in legal writing, with the addition of a few that I do like to see. With that, to the matter:

Try to state the principal question in the first sentence.

Give the court's holding in the first paragraph, preferably in a short introductory sentence. Put the sex appeal in the first sentence and last sentence of each opinion—or at least in the first paragraph and last paragraph of each opinion.

One idea to a sentence.

Present tense.

Active voice, not passive voice, as far as possible.

One word instead of two; two instead of three, four—and so on.

Do not use *claims* or *argues* when you mean *contends*, *asserts*, *maintains*, *alleges*. While we are on the subject, remember that *pleaders* allege, while *pleadings* assert or claim.

No zeros after a whole number; for example—\$25.

No Latinisms, if possible; for example—prefer *later* to *subsequently*, *before* to *prior to*, *about* to *approximately*.

Rarely if ever use legalisms, e.g., *thereof*, *therein*, *herein*, *said*, *hereinafter*, *pursuant*—only where they are familiar and unavoidable, as *prima facie*, *res ipsa loquitur*.

No comma when the day of the month is not given—  
June 1986.

No overparticularization, which can throw your reader off by causing him to try to keep track of things that do not matter. For example—do not write “On April 1, 1990” unless the day is significant. Instead, write “Last spring.”

Do not use possessives with things, except personified things, e.g., *ship's*, *state's*.

No weasel words—*very*, *quite*, *rather*, *somewhat*.

*Only* belongs immediately before (or perhaps immediately after) the word it modifies. Thus, you avoid such jokes as “He only killed her.” As to meaning, *only* is an ace of trumps; note how moving it around alters the sense of a sentence:

1. He thought that he would study *only* Latin (or “Latin *only*”). [He would study nothing else.]
2. He thought that he would *only* study Latin. [He would study Latin, not master it.]
3. He thought that *only* he (or “he *only*”) would study Latin. [No one else would study Latin.]
4. He thought *only* that he would study Latin. [He thought of nothing else.]
5. He *only* thought that he would study Latin. [He thought about it, but did nothing.]

6. *Only* he thought that he would study Latin. [No one else thought so.]

No *supra*, *infra*—except on rare and necessary occasions.

Do not use *implement* and *implementation* when you mean *carry out*.

*Masterful* means domineering, inclined to behave like a lord; *masterly* means skillful, done like a maestro.

No *contacted*, no *finalized*, no *exited*, or other verbalized nouns. And for the love of God, no “Boykinized.”

*In* these circumstances—not *under*.

Usually—no split infinitive.

Jones’s—not Jones’.

No elegant variation. Do not be afraid to repeat a word.

*Usually* or *ordinarily*, not *normally*, unless you are referring to someone who has recovered from a fever.

Use lower case for the district court unless the district is mentioned; upper case for Courts of Appeals.

Never write *the court below*. Use *district court* or *trial judge* instead. Be gentle with district judges. Never, for example, use *failure* in referring to an action of a district judge.

Because of their time dimensions, *while* or *since* can throw readers off when you mean *although* or *because*.

Always use articles—*the* plaintiffs. Well, almost always.

The adjective is the enemy of the noun; the adverb is the enemy of the verb. Think of the right word instead: "He was crushed [not 'very upset'] by the news."

Do not overwork *which*, an ungraceful word. Mark Twain rewrote *Innocents Abroad* without using the word *which*. Remember also that *that* is restrictive and that *which* is nonrestrictive.

*First, second, third*; not *firstly, secondly, thirdly*—and not *importantly, either, or lastly*.

*Proved*, not *proven*—unless you are serving on a jury in Scotland.

*Virtually*, not *practically*, unless you are distinguishing *practically* from *theoretically*.

*Of* is unnecessary in the question [*of*] *whether*.

Different *from*, not different *than*. Good Lord, you should know that.

*The fact that*—omit *the fact*.

Underline or italicize "*Jones*" in "*Jones* held . . .," to distinguish the case from our old friend Jones.

Do not underline or italicize the title of a case when the entire style is given; underline or italicize if one party's name is given, e.g., "In *Miranda*, the Court said . . . ."

Avoid vogue words and phrases. Some current examples are *early on*, *over time*, *contacted*, *scenario*, *parameters*, *input*, *viable*, *meaningful*, *hopefully*, *interface*, *state of the art*, *ongoing*, *one-on-one*, *send a message to* (some group of people), etc.

Do not allow yourself to be browbeaten by the feminists into writing barbarisms such as "Each of us should paddle their own canoe."

No puns or witticisms at the expense of the litigants—think how you would feel if a court not only affirmed a judgment against you but jeered at you in the process!

*To*—not *in order to*.

Do not begin a sentence with *however*, unless it means "in whatever way" or "to whatever extent," as in "However that may be, it has no relevance to this case."

When possible, avoid prefabricated chunks of verbiage—"The fact of the matter is," and the like.

*Comprised* is not a synonym for *composed* and does not take the preposition *of*: To comprise is to embrace or to contain.

Except in the case of convicted criminals, usually give persons their titles in your writing—even if, as in the case of S. Holmes, the title is only *Mr*.

ON THE OTHER HAND, the important thing is to get the right result:

A sales manager, always punctilious about grammar and correct spelling, received a letter from a newly recruited salesman:

Dear Boss: I seen this outfit which ain't never bought a dime's worth of nothing from us, and I sol' 'em a couple hundred thousand dollars worth of goods. I am now going to Chiaugo.

Second letter from salesman to manager:

I come here to the windy city as I sed and sol' 'em half a milliyon.

Next was a letter from the sales manager to the sales force:

We all bin spendin' too much time hear tryin' to spell instead of sell. Let's all watch the sails. I want everybody would read them letters from Gooch whose on the road doin' a grate job fer us, and you should go out an do like he done.

