

Examining Other Professional Prose

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Good writers study good prose and then experiment with the rhetorical devices they discover.

Toward that end, I offer two examples of successful legal writing: the first is a short section of a brief, and the second is from an opinion letter to an administrative-law judge. Both were written to persuade their audiences, and I believe both were successful for similar reasons.

Appreciating a Maestro's Touch

Here is the short part of a brief.

C. Defendants Fail to Justify New Mexico's Discrimination Against Interstate Commerce

In their Brief on Remand, Defendants attempt to justify or explain away New Mexico's discrimination against interstate commerce in water. Their efforts fail.

To begin with, Defendants suggest that the Supreme Court in *Sporhase* approved equally substantial discrimination by Nebraska. Defendants' Brief on Remand at pp. 12–13, 15–16. This suggestion is erroneous. The Court found that Nebraska's export laws "may well be no more strict" than its in-state regulations. 459 U.S. at 926. Nebraska's in-state regulations are "severe": Nebraska requires flow meters on every well, specifies the amounts of water per acre that can be used, and prohibits intrastate transfers except between lands controlled by the same user. *Id.* at 955–956. New Mexico, in contrast, does not require meters, does not limit per-acre water use, and does

not severely limit intrastate transfers of existing rights. In fact, protection of prior rights is the only limit that New Mexico places on in-state transfers of existing rights, and New Mexico counts on the marketplace in those rights to transfer water from irrigation to urban uses. See generally Defendants' Exhibit F, pp. 200-208; R. Supp. 138; Reynolds' Statement, pp. 21-23.¹

In this example, Professor Pieter Schenkkan uses three stylistic techniques worth investigating: first, his effective *transitions* pull readers through the argument; second, he makes optimum use of *parallel sentence structure*; and third, he twice breaks his paragraphs with unusually *short sentences* that deliver an undercut punch.

Transitions

Schenkkan uses two transitional devices: traditional word transitions and repetition.

His word transitions signal location in the material (*To begin*), signal contrast (*New Mexico, in contrast*), and signal a shift from general to specific (*In fact*). Each of these overt transitions works directly; each presents an explicit road sign signaling where the reader stands in relationship to the rest of the text.

To provide additional transitions and create emphasis, effective writers can repeat important words throughout a document. Schenkkan uses a more subtle form of repetition — he repeats important syllables; that is, he repeats a piece of a word containing a major concept from one sentence to the next sentence. This repetition functions as a sophisticated transition, connecting sentences with variations on a word. He changes a strong verb

¹ Plaintiffs' Reply on Mootness and Facial Unconstitutionality, *City of El Paso v. Reynolds*, No. 80-730HB (D.N.M., filed Mar. 19, 1984).

(*Defendants suggest*) into a noun (*This suggestion*). He repeats a verb from the heading (*Fail to Justify*) in the text and even adds a synonym to it, doubling its effectiveness (*attempt to justify or explain away*). If readers had not already focused on the message the first time, they are subliminally bombarded with it the second time. The repeated syllables create a subtext that persuades through sophisticated repetition that is not really perceptible unless readers study the paragraph for rhetorical devices; the subtext, however, adds a parallel layer of reinforcement for the main text, emphasizing the primary points.

Parallel Structure

The most memorable English prose develops through parallelism — the repeated use of any piece of sentence structure, from prepositional phrases to entire independent clauses. This repetition of form is used more frequently than repetition of words to establish a cadence, making it a perfect form for speeches (and introductions to important arguments):

And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country.²

[W]e shall not flag or fail. We shall go on to the end. We shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.³

² President John F. Kennedy, Inaugural Address (Jan. 20, 1961).

³ Winston S. Churchill, Speech on Dunkirk at the House of Commons (June 4, 1940).

The cadence catches the attention of the listener, and the reader, through a strict adherence to pattern. Whether writers use parallel nouns or verbs or phrases, the form must remain consistent for it to work. But done correctly, it does work and is worth the effort.

In his paragraph, Schenkkan parallels the verbs and objects after the nouns/subjects — not just in the first list for Nebraska, but again in the second list for New Mexico. Indeed, he not only creates the initial parallel (*requires flow meters, specifies amounts of water, prohibits transfers*) but also repeats that parallel in the second series: a parallel of a parallel.

No one is so naive as to believe that Schenkkan produced this paragraph in his first draft. He worked on the material after he developed the legal concepts, after the first draft, and maybe even after the tenth draft. This argument was apparently important enough that he felt justified taking the time to massage his word choice and sentence structure so that they would carry as much power as the law that he is describing.

Short Sentences

Another prose technique is to vary sentence length. Schenkkan places two wham-bang punches into sentences of only three and four words:

- Their efforts fail.
- This suggestion is erroneous.

These short sentences, which set up his major arguments, call attention to themselves by their brevity. *Their efforts fail* follows a 20-word introductory sentence. Similarly, *This suggestion is*

erroneous presents a striking contrast to the two long sentences on either side of it. Schenkkan has resisted the temptation, to which most of us give in so easily, to elaborate the major point with qualifications, discussions, and definitions. When I examine my own paragraphs for the major ideas, I usually find them linked, like railroad cars, with all the detail I thought so important to the idea that I did not want it separated from the core meaning, the train's engine. I thus unwittingly defeat my purpose.

No one suggests, however, that all sentences in legal writing should *always* contain only four words; choppy, jolty prose may work for *USA Today*, but it is not appropriate for legal writing. The lesson is that an occasional short sentence is not only appropriate but also dynamite when it is crafted carefully.

Another Maestro at Work

In a second example of good writing, Gus Ankum, an analyst at the Public Utility Commission of Texas, produced this response to AT&T's argument before the commission:

AT&T does not, in a systematic way, address any of the factors traditionally used in economic analysis (see above). Nowhere does AT&T discuss what their unit cost is versus that of smaller carriers. Nowhere does AT&T expound on the benefits from scale economies in production, distribution, capital-raising, or promotion. Yet, it is exactly these topics that fill the larger part of any textbook on industrial organization and that in the minds of their authors are instrumental in explaining industry structure and performance — the expressed purpose of this proceeding. The omission is conspicuous.

As you can tell, this paragraph uses many of the same rhetorical techniques as the first example.

Transitions

The one explicit transition in this paragraph is startling. The word *Yet* creates an interesting break in the prose rhythm. Within the structure of the paragraph, it operates as a fulcrum: the first three sentences list what AT&T is not doing; the *Yet* breaks the paragraph and its contents in two, both signaling the contrast and introducing two sentences that explain what AT&T should have done.

Repetition

The paragraph achieves its force through the use of negatives, beginning with *AT&T does not*. Then Ankum manipulates the specific negative *does not* into the global *nowhere*, places it at the beginning of the second sentence, and thus emphasizes the negative. He repeats *Nowhere* as an eye-catching beginning to the third sentence, creating a predictable rhythm that builds momentum into the contrasting sentences that follow *Yet*.

Short Sentences

No one could fault Ankum for too many short sentences; indeed, the fourth sentence is unusually long. But the concluding sentence, which follows the long, explanatory fourth sentence, carries a TKO punch. It contains only four deadly words (*The omission is conspicuous*). The variety of sentence lengths, like Schenkkan's above, adds additional power to the paragraph.

Of course, there are endless ways to approach the same paragraph and produce good results — as long as well-read writers apply themselves to the task.

