PLG-120 Week 8 Lecture Notes

The English language allows several meanings for the word "style." What we mean here are the rules of grammar and usage and the important conventions of the legal writing discourse community, that, if followed, allow your work to be understood and appreciated as legal writing (as opposed to other forms of writing). Learning legal style is critically important to those of you seeking recognition as a good legal writers and membership in this discourse community.

You should speak and write as plainly as possible, using ordinary words, and omitting the legalese ("said parcel," "the party of the first part," "aforesaid") and Latin and French-inspired phrases (*"Est ipsorum legislatorum tanqum viva vox." "Et de ceo se mettent in la pays"*) as much as possible. The object of legal writing is explain the issues and rules in common language as plainly as you can. The exception to this rule is when you must invoke those Latin and French phrases that have been so ingrained in the law that they are now legal terms of art, and there is no way to express the concept they stand for in a concise manner except by using the Latin or French term. Examples: *res ipsa loquitur, res judicata, respondeat superior*. In these instances use the phrase as the most efficient tool to express a complicated concept, not as a crutch to make your writing sound more lawyerly.

A less obvious form of legalese is verbosity: a lawyer's tendency to use too many words to express a thought. Part of the goal of using Plain English is to be readily understood, and to this end, you should strive to write as concisely as possible. Omit needless words in your writing. Rigorously examine each sentence to see if it can be made shorter. Break up long sentences with independent clauses into two or three short sentences. In general, paragraphs should contain no more than five or six sentences and be less than half a page in length (double-spaced).

The passive voice involves the phrasing of a sentence so that the object of the sentence comes first, followed by a form of the verb "to be" in front of the action verb, with the subject placed last. Passive voice de-emphasizes the "subject" and often leaves the true subject unnamed. Passive voice sounds weaker than the active voice. However, sometimes there is a good reason. If your goal is to de-emphasize or conceal the subject, then you intentionally can use the passive voice to draw attention **away from** the subject. Additionally, passive voice is inherently wordier than active voice.

There are some obvious boundaries within which you will be safe if you follow a moderate level of quotation. Plagiarism is the act of appropriating the writing or the ideas of another and passing them off as the product of one's own mind. **In practical legal writing** (memos and briefs, for example) it is not so much the borrowing of language and ideas from legal sources that is troubling; rather, the problem is the failure to attribute them by proper citation to the source from which you got them. Failure to cite is not only an offense against ethics and intellectual honest and, in some instances, a violation of the author's copyright, it actually is a terrible idea for your legal writing. What your readers want to hear is what the sources of the law say; by providing a citation to each authority you rely on in your analysis, you are assuring them that you are communicating this information. If language is borrowed, you must cite the source of the language.

In **academic legal writing** (such as law review notes and journal articles and the work you write for your law school classes) the ban against plagiarism is *very* strict. Do not quote so much that the quotations attempt to replace your own analysis of the issues.

In most circumstances, it is proper to quote the applicable or pertinent terms of a rule of law. At times, it is very important to do so. You should quote the exact terms of a rule of law when:

- the judicial orders and opinions from your jurisdiction all use the same wording of the rule;
- the rule comes from a constitution, statute, or administrative regulation; or
- the rule contains certain required elements or terms of art that must be identified (for example, "proof beyond a reasonable doubt," "clear and convincing evidence"). In this last instance, only the terms of art need to be quoted.

In many instances in legal practice, if a *rule* is short enough (generally one sentence or less than 50 words long), you can simply re-state the rule directly from a source and provide a citation to the source and page number without using a set of quotation marks. Note: only the *quotation marks* are optional; the citation absolutely is required. On the other hand, the text of secondary authorities almost always is copyright-protected, so *any* quotation from a secondary source must show the quoted words with quotation marks or block quotations in addition to having a cite to the source.

Citation rules state that if your quotation is more than 50 words, you should block it off from the rest of the paragraph by double indenting the quoted material, single-spacing it, and omitting the quotation marks. The citation is presented in the *un-indented* line of the paragraph, immediately following the quotation. If the quotation contains fewer than 50 words, you should leave it in the body of the paragraph, use quotation marks if you have determined to do so, and not alter the spacing of the paragraph or lines containing the quotation; in other words, leave it in the same formatting as the rest of the paragraph in which it appears.

Case parentheticals are designed to provide one or two pieces of information about an authority in as ***few*** words as possible. As a general rule, they are not use to write a sentence or two summarizing the authority. Parentheticals often are drafted without reference to ordinary rules of grammar and punctuation; thus you can say exactly what you want to say in the shortest way possible.

Dicta from a court opinion, particularly an opinion from a court within the appropriate hierarchy of judicial authority, can be very important to your analysis, and you will find many occasions to discuss dicta in your writing. However, it is important to remember that dicta is not controlling, and you should not pass it off as a holding when you include it in your legal writing. The goal is to discuss dicta in such a way that the reader will not be led to believe that what you are talking about is part of the holding. To avoid communicating that something from a case actually is the holding when it is really dicta, you must discuss the material in such a way that it is clear that it is dicta, but still has importance – and you should explain the importance.

Legal writing must be professional and should sound that way. You should not be loose with your language and should not attempt to inject humor or "hipness" into your writing by using slang or colloquialisms. Contractions generally are considered improper in actual legal work product, and you should avoid them. However, it is perfectly fine to use shorthand words and abbreviations of parties, institutions and agencies, acts and statutes, once you have correctly identified them in your work.

You generally should avoid using symbols (&, @, #) in your writing unless the symbol is part of a rule, statute, the name of a company or firm, or an email address. Examples: U.S.C. § 123, 13 Apex Comp. Stat. Ann. ¶3-307, Jenner & Block, farnsworthea@slu.edu. Avoid using first-person and second-person references. Avoid rhetorical questions. If the point you are making is obvious, simply state it in a concise way and move on. You should write out dates in the American English form of "**Month Day, Year**," as in "August 31, 1998."

Proper legal writing is internally consistent. It promotes clarity to use the same names or terms to refer to the same parties, persons, and objects throughout your work. The principle of parallelism also applies to verb tenses, articles, and pronouns. The principle of parallelism also advises that you use any terms-of-art or key phrasing of factors, elements, and legal standards when applying them to your facts. Do not use creative synonyms just to vary your vocabulary.

You should not default to the "generic" pronouns *he, him, his,* or *himself* in reference to persons and positions. Do not attribute emotions to courts: Courts con't "feel," so do not say, "The court felt that Jones was wrong." Always use the past tense to describe what the court said or did in a case you are using as authority. Be precise in describing what the court did: the court **granted** or **denied** a motion, **sustained** or **overruled** an objection to evidence, **accepted** or **rejected** an argument or position, **held** an issue of law, and **found** a fact.

The "Golden Rule of Citation" is WHENEVER YOU MAKE A STATEMENT ABOUT THE LAW IN YOUR DISCUSSION SECTION, YOU MUST PROVIDE A CITATION TO AUTHORITY. Any **legal proposition** – defined as a rule of law, any statement of or about the law, the holding of a case, or a legal principle – ***must*** have a citation to legal authority. Citation to ***factual*** sources in your Statement of Facts, however, is appropriate (and required if you are quoting from factual materials).

Citations should include the exact page where the material you are citing appears, which is called a "jump cite" or "pinpoint cite" or "pin cite." In the example, Shorty v. Lefty, 823 W.2d 234, 237 (Apex 1990), the reference "237" is the jump cite, meaning that it is the page of the case where the material you are referring to appears. In general, you should provide a jump cite when you are citing an authority for any purpose. Do not simply city the first page of the authority and send your reader off to find the material somewhere in that authority.

Cite all the sources your need, but avoid string citations. Citations should reflect all of the sources you actually used to compose a legal rule or proposition. When you present a legal rule (or sub-rule) that was generated by or in several cases, you should cite to all of them. That said, *do not over-cite*. The only place you generally should construct a long "string cite" of cases (if at all) is in the explanation section, when you are presenting a thorough explanatory synthesis.

There is no optimal or maximum number of cases that should be synthesized to induce an important principle of interpretation or application of a rule. In general, when using inductive reasoning through explanatory synthesis, the more cases the better. However, string citations in the rule section generally are unnecessary. If you have controlling authorities that say the same thing and all are from the same general time period, a good rule of thumb is to cite no more than three of these redundant cases for the point on which they all agree.

Do not use a humorous tone or excessive emotion. This is not to say that you should leave out all vivid, descriptive, and even clever language from your writing. Clever language used sparingly can be effective. You can turn a clever phrase, but do it to make a point, to drive something home, and to make an impression that might last a bit longer. Never do it just to be funny. Neither should you show anger or excessive emotion in your writing.

The importance of editing cannot be emphasized enough. The mantra of great authors is that **there is no such thing as good writing only good rewriting.**