

SOME THOUGHTS ON WRITING

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Writing is hard. Really hard. For me it is one of if not the most difficult things I do, and it assuredly is the hardest thing I do regularly. There are some things I will find myself telling you over and over if you are working with me on writing, and so I decided to put some of them down on paper. My hope is not that you read this quickly and put it aside, but that you pull it out a couple weeks before you have anything due to me, and review it.

I'm mostly going to talk about academic writing, but I will say this. Writing may well be the most valuable skill you can bring to any job as a lawyer. If you are a good writer, and smart, you will be the MVP where you work. In every law setting with which I am familiar, folks can tell you – and often *will* tell you – who their best writers are. And the things I say here often are applicable to any form of legal writing, from a memorandum to a brief, to a client update on an area of law, to an oped, or an article or book.

Here's how I think of writing. It is an art, but underneath it is a science. There are rules. The rules are made ultimately to be broken. But you can't break them well or effectively unless you know them and can execute them. Both writing by the rules, and breaking them, are challenging endeavors.

I often point to something Charlie Kaufman said. Kaufman is a screenwriter who wrote, among other things, *Being John Malkovich*. He gave [a marvelous speech](#) when he won an award from BAFTA. In it (and I paraphrase) he said “Writers are people for whom writing is just a little more difficult than for anyone else.” You grasp the irony, but I hope also the point. Writers take writing seriously, and so they struggle. (You can find a transcript, which is faster to read, but it is charming to listen to him. *Being John Malkovich* is also a great movie, a great story.)

Writing is a narrative. You are telling a story. Even the most technical writing is telling a story. Instructions on how to work something are telling a story. There is a beginning a middle and an end. You need to know the 1st thing before the 5th thing, and there is no point in adding the Lth thing if it is not part of the narrative. Detours have a reason or they should not occur.

The most difficult part of writing for me is what lawyers would call “organization,” but what I call “telling the story.” Figuring out the order in which to say what you want to get across. Order is important for lots of reasons, including dramatic narrative effect and persuasion, but the first and foremost is to get the pieces in an order your reader can follow. The biggest problem I see in writing is a failure to get the pieces in order, and I confess it irks me. Why? Because I think it shows disrespect for the reader. Admittedly, some stories are really hard to order. But most of the time the author I'm reading did not take the time or put in the effort to think through logical order, or to think about it enough. Stream of consciousness is rarely the right order. Almost never.

I will tell you two tricks for getting your story in order. The first is to decide all the points you want to make and list them on a pad of paper. (Sometimes paper is better than typing, but do as you will.) Then number them in logical order. If they don't belong get rid of them. This is not

unlike when you were in grade school and your teacher handed you a jumbled paragraph and asked you to number the order of the paragraphs to tell the story correctly. The second trick is to tell the story to someone. Or many someones. For what it is worth you do not need an actual someone. For me much of writing occurs on walks, when I tell the story to fictitious audiences. (Speeches or talks are a form of writing; I almost never give a talk that I have not figured out this way first.)

Then there is a method for ensuring your story measures up, and this is the most important tool I will offer you: the topic sentence. Topic sentences are sentences that say what the paragraph is about. Everything else elaborates. There is no hard and fast rule for where topic sentences go, and good authors can put them almost anywhere in a paragraph. That said, good legal writing has the topic sentence at the top. And many people who must read a lot—and that includes some judges before whom you will appear, or law clerks who will read your briefs—will read only the first sentences of paragraphs at times. It is thus your job to read only the first sentence of each paragraph you write, and make sure the story is in logical order. (Similarly, you should read each sentence within a paragraph and ask whether it belongs in the paragraph. If not, take it out!)

This work with topic sentences is time consuming, grueling, and immeasurably difficult. I won't pretend otherwise. Eventually, though, you will realize that like magic it becomes how you think. You will start to tell your story that way, in logical order, with topic sentences atop paragraphs, and when you do, writing is so much easier.

If you don't do the work on topic sentences, you are, again, cheating your reader.

And if you are cheating your reader, you are cheating yourself. Why, after all, did you write if not for your reader?

You will notice that in the last two paragraphs I broke the rule about paragraphs having at least three sentences. After all, if the topic sentence summarizes, you need at least two other sentences to be summarized. But, well aware of the rule, I broke it for hoped for effect. Only you, the reader, can decide if I succeeded.

There is hidden in the discussion thus far a lesson, which is about the importance of editing. Editing ultimately is the most key to good writing, and for me it easily is the most pleasurable. My favorite time in writing is when I have it all down on "paper," and can put away my sources, and just go over and over my text. I do it to make sure the order is logical and the topic sentences in place. I do it to make sure I am not overusing the same word, and to search for synonyms. I do it to make sure the reader can follow easily, and not have to read the text more than once to get the point. This, by the way, is a really critical aspect of professional writing: that your reader take your meaning on one pass.

But editing is more than all that; it is the beauty of writing. For documents I care about, especially for my academic or persuasive writing, I edit so—and until—the text will sing. A friend who is a record producer and sound engineer asked me once how often I will go over a text. He does this over and over with musical tracks. At the time I was co-authoring one of my favorite pieces ever. For the introduction to that piece, the number was over 100.

Let me pivot to introductions, because they are important: they are the beginning.

As a general rule in academic writing an introduction does four things. There is a hook, which draws the reader into the piece. There is a statement of a thesis, what you are setting out to show. (Academic writing is not simply a narrative; particularly in law it is almost always also an argument.) Then, there is a literature review. This can be very short or even omitted to the extent (as is often the case) the article itself has a Part devoted to the literature. And there is a roadmap so the reader knows where you are going. All pieces along the way: topic statements, outlines, drafts, should have these elements in them.

I have some pet peeves about writing that are worth sharing, and you can do with them as you choose. You should avoid the passive voice, except where it is appropriate. ☺ (Emojis apparently are okay in writing these days.) If you don't know or aren't sure about the difference between an active and passive voice, a search engine can help, and you should rush to consult one. I like to keep verb forms together, except when it is appropriate to insert adverbs within. So: "Fred eagerly jumped to edit the manuscript," not "Fred jumped eagerly to edit the manuscript."¹ I believe "since" and "while" are temporal, and if you are not talking about time you almost surely mean to use "because" and "although." And often when people write "where" they mean (and should say) "in which."

I have some real pet peeves about legal journal writing, which—if you care to—you can read about at length. I published them as [Friedman, *Fixing Law Reviews*, 67 Duke L. J. 1297 \(2018\)](#). For example, I detest footnote markers in the middle of a sentence unless they absolutely need to be there. Who wants to read work crapped up like that? In good writing, textual footnotes should be kept to a minimum anyway, though sourcing is another matter.

I have one last instruction to give you, one of my mantras about writing, something fundamental: *you need to read to write*. If you don't know what to say, you probably have not read enough. The more you read, not only will you know more, but you will start to disagree with everyone else. You will have opinions, strong ones, about right answers. And then you will be ready to go, and the words will flow from you, often with little effort.

Although writing is the most difficult thing I do, it is also the most pleasurable. I think beautiful writing is a beautiful thing, and I aspire to it. It is great when you write something, and others appreciate not just the argument, but the writing itself. And even go out of the way to tell you. Still, in truth I am my own harshest critic, and consequently I take great joy from getting my words just how I want them. I hope you can take the same joy from your words. Write words that make you proud.

¹ If you are watching carefully, and have read this more than once, you may have noticed that above I wrote "The rules are made ultimately to be broken," rather than "The rules ultimately are made to be broken." I thought about it and went over it twice in my mind before settling there. I try to be conscious when I break my own rules.