

Litigation #42

Ave atque Vale:

Retrospective Thoughts as I Lay Down the Pen

It has been with great joy that I have authored 42 essays for *Litigation* over the past 12 years. The time has now come, I regret to report, for me to stop writing articles and attend instead to the five books I would like to finish before I start running out of steam. I will therefore technically be on hiatus for a long while; but just in case this turns out to be my last *Litigation* essay, I thought it might be appropriate for me to take a backward look at what I have tried to accomplish in this *On the Papers* column.

For those who are reading this column for the first time, let me give a short explanation of the novel – no, radical ... maybe revolutionary is the right word – approach I have developed for analyzing and therefore controlling the written English language. We have always taught writing (for 250 years now) by laying down the rules of grammar, building up students' vocabulary, and assigning them papers which will be read only by teachers. Those teachers are a fake audience: They already know what the students will be telling them; and therefore the students will be writing

not to *communicate* (which is what lawyers are usually doing when writing) but only to *demonstrate* that they have done enough work to deserve a good grade. All of our pedagogical attention has been on the writer. It matters how hard the writer tried – and perhaps also whether the writer has gotten better since last time. This is not how writing functions in the real world, whether it be the world of law or of science or of business.

In that real world, no one cares how hard the lawyer tried or whether improvement has been demonstrated. Can you imagine a judge looking at a lawyer's brief and exclaiming, "This is a piece of junk. But it is so much better than the one you turned in last time, you win the case."

In the real world, the important person where writing is concerned is not the writer; it is the reader. The only question that need be asked in order to determine the quality of a piece of writing is simply this: Did the reader get delivery of what the writer was trying to send? That's it. If the answer is yes, the writing was good enough; if no, it was not. And it matters little how dazzling or impressive it seemed to be along the way.

There are four questions readers must have the right answers to at the end of reading each of your sentences

if they are to understand what you meant to say: What is going on here? Whose story is this? How does this sentence connect to its neighbors before and aft? and Which word or words in this sentence should I be reading with extra emphasis because they are intended to be the stars of the show? If readers get even one of those answers wrong, they do not understand what you are trying to tell them.

My contribution to the field of writing has been mainly a single discovery, which I have explored at book length several times. The discovery: Readers of English know *where* in the sentence to look for the arrivals of the answers to those four questions. *Where* a word appears in the sentence will control most of *the use* to which it will be put.

We all know these things intuitively as readers. My efforts have been to make them conscious in you as a writer. If you consciously know that readers look to the sentence's grammatical subject to find out whose story the sentence is supposed to be, then you can manipulate that reader's decision by making the subject the person, thing or idea whose story you want them to follow.

“Jack loves Jill” is the story of Jack. “Jill is loved by Jack” is the story of Jill. The latter is deemed by

almost all teachers of English to be inferior to the former, because it is longer and passive, while the former is shorter and active. Nonsense, say I: If you want to be telling Jill's story, the longer, passive sentence is superior. We shouldn't be counting words; we should be placing them where they can do the most good.

So the first 30 of my *On the Papers* essays dealt with a myriad of reader expectations and how to manipulate them.

The other dozen columns looked at the question of how the rhythm of prose can support or destroy the author's intended message. For that purpose, I have developed an analytical tool I call Colometrics, that helps make the auditory visual. I rearrange the prose of a paragraph into what looks something like poetic length sub-lines; and then I separate those sub-lines horizontally so that each horizontal mini-unit represents one accentual "beat" when one reads the text aloud. Great writers employ great music to support their thoughts.

The Reader Expectation Approach can produce for you clarity and force; the colometric knowledge can add elegance and grace. Such prose has a better chance of prevailing, in any competition or conflict, legal or

otherwise. It is even of great use in writing one's daily emails.

We were all taught writing as a series of rules. If you try to make rules out of reader expectations, they will start to crumble. Every reader expectation can be violated to good effect; and our best writers are our most skillful violators. But in order to violate effectively, you have to fulfill your readers' expectations most of the time, so the violation can be experienced as something worthy of note.

Three wonderful things happen for you if you come to master the use of these reader expectations: First, you will get far greater control over your writing process. It will slow you down for a bit, until you get the hang of it; but then you will find yourself writing faster, with comparatively little time spent on revision.

Second, you will get greater control over your readers' interpretive processes. When information appears at random in a sentence – merely obeying the rules of grammatical agreement – different readers are likely to make many different interpretations of a single one of your sentences. The most important reader expectation is that readers naturally wish to give extra emphasis to whatever material arrives at any moment of full syntactic closure – that is, at any properly used colon,

semicolon, or period. Most people put the stress-worthy information earlier than that. It is the nation's number one writing problem, afflicting almost everyone. Get in the habit of putting the most stress-worthy material in what I call the stress position – before a colon, semicolon, or period – and more than 95 per cent of your readers will agree on what you meant; put the same information anywhere else, and the percentage can plummet to 40 or 17 or 6 – and sometimes to zero.

Third, by attempting to utilize these reader expectation principles, you will be led back into your thinking process, where you can clarify what was still mystifying you or finish up what had been left incomplete. In order structurally to place the most important information in a stress position, you must ask yourself the very substantive question, “What did I mean the reader to stress?” You are once again thinking.

I have a very hard product to sell. Only a select few, very few, people will light up with pleasure if you suggest that we spend an hour or two investigating how good their writing is. Most would be actually pained at the suggestion. It is worthwhile taking a moment to contemplate why that reaction is often so negative.

Most people, I have found in my 52 years of teaching the language, feel that the quality of their writing lags

a great deal behind the quality of their thinking. If invited to return to a study of how to improve writing, their response is usually anywhere from intransigent to soured. Mention “writing,” and a majority of folks harken back to their experience under the sway of their schoolteachers, where red pens deducted points for perceived errors. At that stage of life, we rarely knew enough about what we were writing to think of ourselves as having anything definitive to say.

Even in college, most of us had not yet attained an intellectual standing that made us of real interest to most teachers. You get an assignment on Tuesday in an English course to write an essay on Virginia Woolf’s magnificent novel *Mrs. Dalloway*. It is due in two weeks. You read it. Whether you liked it or loathed it on first acquaintance, how in the world were you supposed to be able to respond to it as some sort of faux expert in a mere two weeks? I must have read *Mrs. Dalloway* eight or ten times, over a period of several years, before I was bold enough to lecture on it in a classroom. These paper assignments (I’ll be blunt) were ridiculous – totally unrealistic.

And when we were forced to write in “formal” circumstances, we tended to sound like we were struggling with the confinements of a mega-truss. We made errors we would never otherwise make, being

hyper-aware of what “society” (in the form of teacher) expected of us. Simple example: Some sports hero is being interviewed after winning the big game. He’s asked a question about how he gets along with his Coach. So often we here him begin, “Between he and I . . .” The star knows he has to speak in a formal manner. The occasion calls for it. He would never say “between he and I” in the locker room or at the dinner table. He thinks he is reaching for greater formality; but he is only falling into error. The language is not our friend, so many think, when it is time to be formal.

Let me look briefly at two of the most revered pieces of advice given by almost all writing teachers: “Avoid the Passive”; and “Omit Needless Words.” I will march right into the lion’s mouth by taking on the most highly revered volume *The Elements of Style*, by William Strunk and E.B. White. No book on writing has ever been more loved, more cherished. I remain charmed by the book. I greatly enjoy reading a few pages in it now and then, just to get the combined frowns of Strunk and wistful smiles of White in that charming style. They are very good at explaining the difference between “lay” and “lie,” or between “that” and “which.” But their 19-page chapter on “Elementary Principles of Composition” is, in my estimation, an entertaining journey that cannot help you become a better writer. More bluntly, it fails in its avowed purpose.

Look at their advice about the passive. “Use the active voice” is their rubric for the section. They tell us, “The active voice is usually more direct and vigorous than the passive.” And they are kind enough to hedge a bit and suggest we should not avoid the passive altogether since it is “frequently convenient and sometimes necessary.” They offer no guidance for when we should make these passive exceptions. All the rest of this section is devoted to demonstrating passive passages that are not nearly as active as their active counterparts.

“Avoid the passive” is the single most universally given piece of writing advice throughout our educational history. It is also the single worst thing we teach about the language. You can go back and read my earlier essay on the subject in these pages for a reasoned argument on the subject. Here, your Honors, my dear Audience, I offer just one piece of evidence to explode this hypocritical piece of advice. In thinking about the topic one day, I pulled out my Strunk & White to re-read what they had to say. Some mischevous little elf, sitting on my right shoulder, suggested that I turn the page to see if the Masters themselves had made use of the passive. I found two such uses. I kept reading. Two more. I went back and looked carefully through the entire 19 pages of that chapter. I found 38 passive

contractions. Two per page! The statistician in me had been riled up. I noted that about 50 per cent of the bulk of that chapter consisted of prose examples they had culled from other writers. So I went through their chapter and counted the number of lines of prose that were written only by them. They had written 342 lines of prose, which included 38 passive constructions – more than one for every 10 lines. They write beautifully. Your Honors, I rest my case.

The other piece of advice is “Omit Needless Words.” Logically, this makes no sense to me. Obviously the writer had perceived some *need* to use each of the words that made it to the page. Without that need, they never would have been chosen. So “needless” must have nothing to do with the author, but only with the readers. Why should a writer who is still trying to learn to write know which words a reader would deem “needless”? I will switch texts from Strunk and White to a book I consider one of the very best ever written about writing, *Style: Lessons in Clarity and Grace*, by my consulting partner (1980-90) and good friend Joseph Williams. It is filled with so much good information and sage advice; but he falls into the same traps that have plagued the writers of almost all such books since the 18th century, when the first ones were produced.

He tells us, “Delete Meaningless Words.” Right off, he

gives a list of such words, including “actual,” “individual,” and “particular.” I have looked up these three words (his list included 12 words) in the grandest work of scholarship devoted to the English language, the Oxford English Dictionary. By my count, that estimable tome uses about the following numbers of words in the act of defining the meanings of each of these “meaningless” words: For “actual,” the OED requires 600 words to define the term itself and another 1,400 words for words that stem directly from it, like “actuality” and “actualize.” For “individual,” it requires 2,500 words for the term and another 2,700 words for the derivative terms that add “-ist, -istic, -ality, and -alize” to it as a stem. And for “particular,” the OED needed 5,300 words to define the meaning of the bare term and another 4,800 for the adjectives, adverbs, and verbs that spin off from “particular.” So far is the OED from considering these three words “meaningless,” it summons a total of 17,300 words to articulate their meanings. It is just nonsense, pardon me, dear Joe, to suggest that any word worthy of appearing in the OED can be termed “meaningless” and thereby excluded from our vocabularies.

All this comes from our mistaken impression that in order to write well, all we need do is select the best possible words, keep it short, avoid the passive, and make no errors.

Let us look at one example from Strunk and White's final section in that 19-page chapter – a section that promised great things. It is entitled, “Place the emphatic words of a sentence at the end.” Ha! Strunk and White knew of the existence of the stress position. But one of their examples here demonstrates the fatal flaw in all the advice they give: In order to know that their “bad” example” is bad and has been corrected to be “good” by their rewrite, you have to know already, all by yourself, which of these two is the better one.

Here is the example:

This steel is principally used for making razors, because of its hardness.

That's the bad one. They correct it to be a good one:

Because of its hardness, this steel is principally used for making razors.

Because we so revere the elegant and compassionate author of *Charlotte's Web* and his beloved mentor, we tend to fool ourselves into thinking the first sentence is inferior to the second. But is it? Doesn't it depend on what the author was trying to say? Would all Reasonable Persons always understand that the making of razors is the focal point of this thought? It

seems to me equally possible that razor-makers prefer this steel because of its powerful and attractive *hardness*. Maybe “hardness” was indeed appropriately placed in the stress position of the first sentence.

But there is yet more complexity here. The second sentence really does “sound” better than the first to many a discerning ear. But that sound does not come from the difference between razors and hardness. The problem with the “bad” example is what I have called “the main clause first” problem. (See my essay, “The #2 Problem in Legal Writing Solved.”) Every single writer of the thousands whose prose I have analyzed in the past 12 years suffers from this problem. Everyone has the problem; no one knows about it; and yet the cure for it is readily available. When you begin a sentence with a main clause (a unit that could stand by itself as a sentence) but give it no stress position punctuation, the reader is thrown into a momentary quandary. Should I stress something in that clause, since it is capable of being a sentence all by itself? Or should I not stress it because the comma tells me not to? That is one of the reasons the “because of its hardness” in the “bad” sentence sounds so clunky, so abrupt, so inelegant. In the “good” sentence, the “hardness” information is delivered in a mere phrase, which does not invite stress. The main clause that follows, “this steel is principally used for making razors,” has the dignity and

forward-flowingness to its stress position that makes it sound assertive and intellectually authoritative.

And in addition, the music of the revised sentence flows better than that of its predecessor. A 5-beat unit normally does not resolve easily into a 2-beat unit:

This steel is principally used for making razors,
 because of its hardness.

The 2 beats simply do not have sufficient weight to offset the noble 5 beats that preceded them.

But when the lesser unit of discourse – a mere phrase – is relegated to only 2 beats, it can then function as a diving board, off of which the reader happily plunges into the 5 beats of the main and more important clause:

Because of its hardness,
 this steel is principally used for making razors.

Almost all books on writing give us “bad” examples” which are then rewritten to become “good ones.” In almost every case, I could offer up a context in which the bad one would function better than the good one – as well as another context in which the “good” sentence became terrible.

Here is one last example, from Joe, to whom I owe a great deal for getting me started in the direction in which I eventually went. He tells us that the first sentence here is bad, and the second sentence its correction:

In the event that you finish early, contact this office.

That gets revised into

If you finish early, contact this office.

The second is certainly shorter and more direct. But it is also more brusque. It shouts an order, in a style somewhat military. No time to be wasted here. I'm in charge. Do this when I say you should do this.

That may fit certain situations admirably well. But what if that is exactly the wrong relationship you want to fashion with this reader? What if you wanted to be more caring, more personal? In that case, the first is somewhat preferable. But I think the main clause in the first is still too abrupt. "In the event that you finish early" has a leisurely pace to it. There are three beats – on "vent," on "fin-," and on "earl-." But they are housed in a qualifying clause of 10 syllables. That is why the 2 beats of "contact this office," housed in only five syllables, still seems abrupt. What to do? Stretch

out that main clause by adding another beat, so its 3 beats will parallel the 3 beats of the earlier qualifying clause. While you're at it, throw in a touch of politesse:

In the event that you fin- ish early,
please contact this office.

The English language is a thing of beauty. On occasion, it can become a joy forever. I have not spent these years in this column trying to make lawyers into novelists or poets. The serious language of legal briefs, the dramatic language of courtroom utterances, and even the mundanity of letters or emails to clients all function by the same forces that are always in action between the prose of the writer and the understanding of the reader. Through a conscious knowledge of the expectations readers have about what to find where in our sentences and in our paragraphs, we can achieve clarity and force, which together create persuasiveness. And if we can become aware of the music we are creating through our rhythmic patterns – which is there whether we consciously plan it or not – we can add an elegance that our readers will respond to without being aware of it. Taken all together, these elements, not just of style but of comprehension and communication, can put you in charge of your prose; and, in turn, your prose will put you in charge of whatever the situation may be.

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*If you want easy access to all 42 of my *On the Papers* essays, go to my website, GeorgeGopen.com, choose “Writings” from the main menu, and then click on “Articles.”*