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Effective Legal Writing Guide



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United States General Accounting Office

EFFECTIVE LEGAL WRITING GUIDE

Office of the General Counsel
United States General Accounting Office

July 1981

EFFECTIVE LEGAL WRITING GUIDE

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INTRODUCTION

The ultimate end to which this Guide is tending is the elimination of choplogical argumentation, inappropriate interpunction, and the employment of unessential shibboleths in your transactional communications with the recipients of our legal written productions.

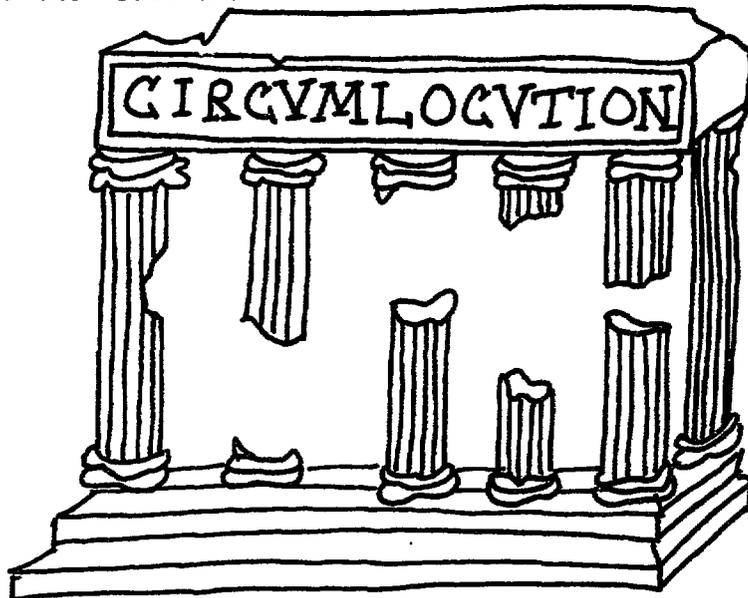
What did we just say? Never mind. We suspect that you reacted to the above gobbledygook the way many of the recipients of our legal writings do when forced to decipher equally confusing "legalese." It isn't easy to spot legalese when you live and work with the jargon every day. That is why we turned to a group of professional writers to identify some of our most glaring shortcomings in accomplishing our Office's mission. Our mission, of course, is communication. People ask us questions. Our job is to give them the answers in a way that is at once timely, legally sound, and understandable.

Our professional writers read a representative sample of the writings from each Division and section of the Office of General Counsel for the month of October 1980. A panel of some of the best writers in OGC also read the same decisions; so did the members of the OGC Management Committee. What follows is a consensus of recommendations to improve the way we write our decisions, opinions, and office memoranda. It is by no means complete. We are issuing this Guide in loose leaf form, fully expecting to add, delete, or modify the recommendations from time to time in response to suggestions from our clients, from top management, and, most assuredly, from you. We welcome your comments on the efficacy of this Guide and encourage your participation in proposing revisions.

In the meanwhile, writing attorneys should use this Guide as a reference before handing in a draft for review. The table of contents could serve as a quick checklist to be sure that none of the common writing errors mentioned have crept in by mistake. Reviewers at each level in our OGC hierarchy should use the Guide as a touchstone of acceptable quality of writing. Drafts which do not meet these standards will generally have to be rewritten, except where an unusually tight deadline or other emergency makes rewriting impractical.

Note that the standards are written in terms of objectives. There are few absolutes and "nevers." For the most part, the standards reflect the writing preferences of our panelists and the Management Committee, the

General Counsel and the Deputy General Counsel. For example, attorneys are asked to think twice before using an archaic circumlocution when a straightforward, short declarative sentence will do. If anyone thinks that s/he must use the more involved expression, s/he should be prepared with a good explanation for the reviewer.



It would not be fair to leave you with the impression that all the hard work you have put into the task of improving the written quality of our products in the last 2 years has gone unremarked and unappreciated. It has been evident to all of us that many of the excellent precepts you learned from Jodi Crandall's course in Effective Writing in 1979 have been taken to heart. In fact, Jodi herself (Jodi was one of our panel of professional experts) remarked with delight:

"OGC should feel proud of the improvement in the writing within the division. It has become more natural, with fewer archaic expressions, and more attempts at direct, active sentences. It is much more readable than previous OGC writing which I have read. . ."

Other panelists, though not familiar with our B.J. (Before Jodi) products, were similarly complimentary. And, as Mr. Socolar said in his January 17, 1979, memorandum to all OGC attorneys.

". . . overall we do a remarkably good job given the time constraints we often operate under."

Mr. Socolar then went on to say that the quality of our writing is not uniform among all our attorneys. He thought we could and should do better. Mr. Socolar still thinks so. His opinion is shared by a number of others in a position to know both within and outside of the GAO. That is why the OGC Management Committee was asked to commit itself to produce a measurable improvement in the quality of our written legal communications. We hope this Guide will help in achieving that goal.

The OGC Management Committee

CHAPTER I

FORMAT AND ORGANIZATION

A. Decisions

1. Requirements

This is not the place to debate the value of the prescribed "Matter of:" format for all formal decisions. Some of us are uncomfortable with the carefully neutral, impersonal style of writing which our present format dictates. Perhaps this section will be revised in a future issue of this Guide. For the present, however, let's accept the following as "givens":

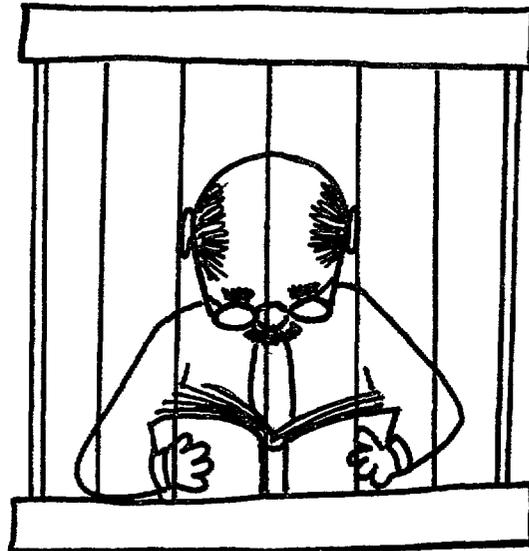
(a) We will have a "Matter of:" title line. (See Chapter V, sec. C for discussion of its content.)

(b) We will follow the title line with one or more digests, preferably with no more than 90 words each, and certainly no more than 180 words. (See Chapter VI for discussion of digests.)

(c) We will refer to the requester of the decision in the third person.

(d) The issue or issues to be decided, and GAO's conclusions should generally be stated right up front, in the first or second paragraph, if possible.

The concept of stating conclusions at the top of the decision was first introduced two years ago, and seemed revolutionary to many attorneys. They had never considered the value of capturing reader interest quickly and maintaining it. This concept wasn't easy to sell, at first. Some said, "If you give away the whole show in the first paragraph no one will bother to read the rest." Others remarked that whenever they watched outsiders read a GAO decision, they noticed that they started with the last page. (Of course they did! We had trained our readers, over a period of many years, to look for the most important part of the decision last.) Most attorneys adjusted well to the "up front" recommendation for issues and answers, a recommendation which our panel of experts has unanimously endorsed. It has thus become our fourth and last requirement.



There were very few decisions in our October 1980 sample that did not make a valiant attempt to comply. However, some attorneys, and some groups, have more difficulty in isolating the issues and announcing the conclusions

than others. In some decisions, the conclusion is slipped in between a long recitation of facts and an equally long analysis of opposing arguments. It isn't even dignified by giving it its own paragraph. One procurement decision, for example, required three readings before it dawned on an uninitiated reader that the essential reason for denying the protest was there, all right. It was written as if it were just one more agency argument which sooner or later would be refuted. When the reader realized that it never was refuted, she realized that she had stumbled on the conclusion.

In other decisions, it is unclear where a statement of "black letter" law ends and the GAO conclusion begins. For people with this difficulty, we suggest a separate paragraph to announce the conclusion, starting with: "GAO concludes . . .", or "we hold that . . .", etc.

LAW

The expert panel thought that the technique some of us use was too startling and abrupt--i.e., "The answer is no." Perhaps they were turned off by a particular case that appeared in our sample. There was a 90 word first sentence presenting two complex questions. This was followed by a terse, "The answer to both questions is no." Unfortunately, by that time the reader had long since forgotten the two questions.

2. Suggestions

The Management Committee received more suggestions from its outside and in-house experts on organization and format than on any other topic. After long discussion, we decided not to require a fixed structure for every decision (other than the elements discussed in 1 of this chapter). On the following pages, we are passing on some of these suggestions for your consideration, together with some of the most pungent criticisms of our present organizational ability. Again, you are not required to adopt all of these recommendations, in the interest of maintaining maximum flexibility. You are, however, required to turn out decisions which are as free as possible of the major faults identified below.

(a) Transitions

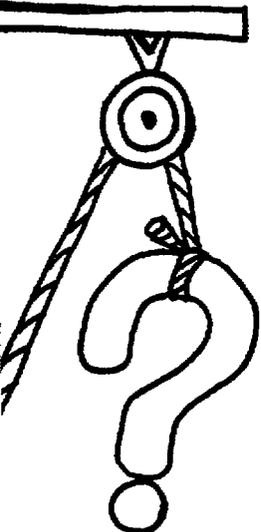
This difficulty is generally not applicable to short, one-issue cases. However, where there are multiple questions and/or a great many opposing arguments, it takes a lot of thought and planning to get from alpha to omega without interrupting the "flow" of the decision.

Some decisions resort to awkward transition language like:

"Another question raised concerned..."

or

"This brings us to the third question in which the certifying officer asked..."



~HEADINGS~HEADINGS~

It was suggested by our outside panel members that we use captions or headings instead for all decisions. The most frequently recommended headings were:

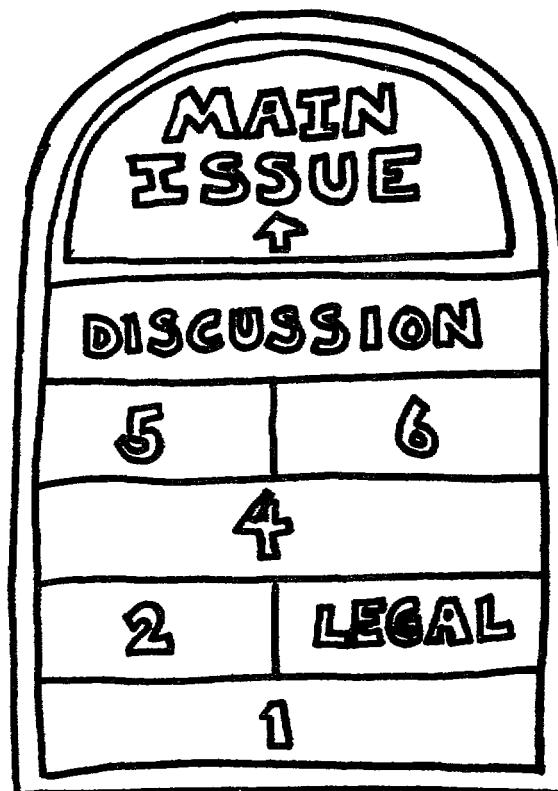
- "Facts" (or "Statement of Facts")
- "Background" (preferred by a few)
- "The Question" (or "Question 1", if it is a multiple issue case)
- "Discussion". Some would interpose:
- "Contentions of parties"
- "GAO's conclusions"

Some of our in-house panelists warned against a mechanical use of general headings in all cases, regardless of whether they were specifically related to the issues in a particular case.

Headings are extremely useful in focusing the reader's attention on the stage of the decision we have reached. They also avoid the need for clumsy transitional phrases. But headings are only helpful if used judiciously. If they are used inappropriately, the decision will be jerky (literally). The reader's attention will be jolted from one little box to the next and s/he will lose the unified thought sequence that good decisions embody.

The bottom line is that we are free to use headings when they contribute to the orderly presentation of the case. We do not think that headings contribute very much to short or single issue cases. We also caution against the use of headings which are not of equal significance. For example, in this series, the last two headings are really subheadings of the first:

- I. Discussion
- II. The agency's arguments
- III. GAO's arguments



"HOPSCOTCH, ANYONE?"

In any event, each decision will be evaluated on the results achieved—not on the method used to get there.

(b) Logic and coherence

Our objective is to write a decision which is easy to follow. Two serious illnesses, which all of us have contracted at one time or another, make this objective impossible to fulfill. The first illness is "gapitis."

The attorney afflicted with gapitis suffers from loss of memory. S/he has forgotten the day s/he first received the case, and how much time it took to become familiar with the record. The attorney with gapitis exhibits a curious reluctance to take readers by the hand and walk them through the important steps the writer took to arrive at the conclusion. The result is a decision with puzzling gaps, either in the statement of facts, the statement of the law, or the relationship of one to the other.

There was one decision in our sample that recited a number of regulatory paragraphs from the Federal Travel Regulations but never explained their application to the facts. It was assumed that our readers would understand those murky regulations immediately and make the connection themselves. The assumption was not well founded. They couldn't jump the gap.



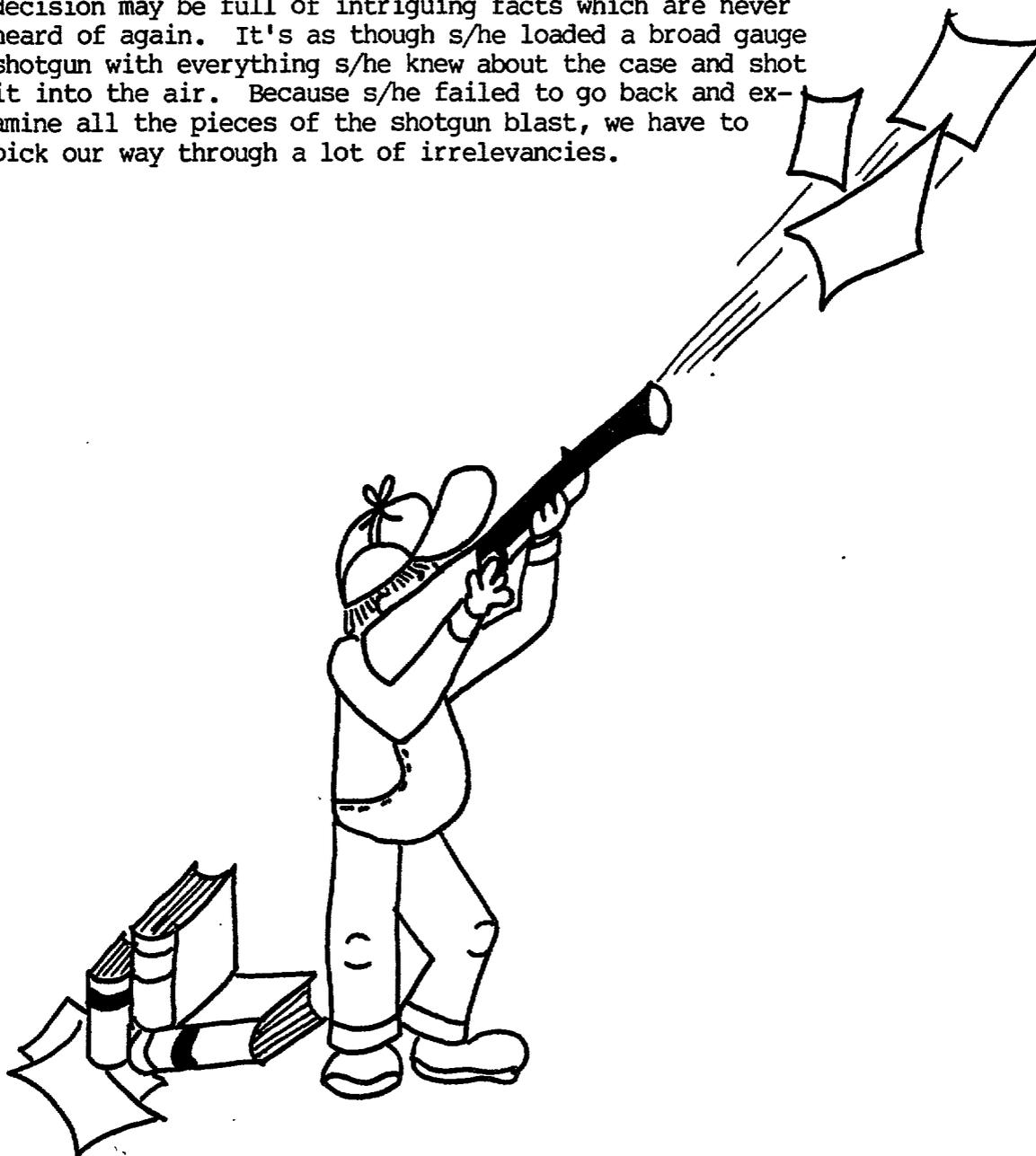
There was another virulent case of gapitis that showed up in an attorney's first draft of a letter to a GS-6 mail clerk. (We realize that this discussion is supposed to be focused on decisions, rather than private inquiry letters, but this is too good an illustration to miss.) The mail clerk wanted to know if it was permissible for him to moonlight, selling Fuller brushes. The attorney trotted out all the regulations with general applicability to moonlighting by Government employees—three pages worth. She did not bother to mention which section or subsection governed the clerk's particular situation. Even if she had, it is doubtful that the mail clerk would have understood its significance without some careful paraphrasing.



Gapitis can also be manifested by a failure to include all the relevant facts the reader needs to arrive at the same conclusion as the writer. Several of us compared notes about one particular case in our sample. It concerned some "variations of itinerary" language in a travel order for a member of the Armed Services, permitting him to take his sick mother to the States for medical treatment. We do not necessarily disagree with the conclusion of the case. We just don't know how the attorney got there. We remain convinced that there must be a number of facts which he knew and we didn't.

The second disease, from which a number of our attorneys suffer and which is almost always fatal to the qualities of logic and coherence, is the "Scattershot Syndrome."

This illness often starts early, in the presentation of the facts. Many interesting tidbits are included which the poor reader struggles valiantly to keep in mind. The reader feels sure that they must be important in the eventual resolution of the problem. The reader would be wrong. If the writer has the Scattershot Syndrome, the decision may be full of intriguing facts which are never heard of again. It's as though s/he loaded a broad gauge shotgun with everything s/he knew about the case and shot it into the air. Because s/he failed to go back and examine all the pieces of the shotgun blast, we have to pick our way through a lot of irrelevancies.



Variations of this disease are found in the tendency of some attorneys to quote endlessly from statutes and regulations before a proper foundation has been laid, explaining the importance of the material quoted. In some decisions, the explanation of the quoted material comes several paragraphs--or even several pages--later. (See also additional comments on the over-use of quotations, this chapter p. I-10.)

One of the most serious flaws in our decisions (for which we have no ready name) was identified by all the panelists. It occurs primarily in multi-issue decisions, and indicates, we fear, sloppy thinking. It is the inability of some attorneys to complete one thought or one question before they pick up another.



We are not sure how best to curb this tendency. A few panelists suggested that the lawyer be asked to prepare an outline of all questions, the applicable law, and the proposed answer, before a word is written.

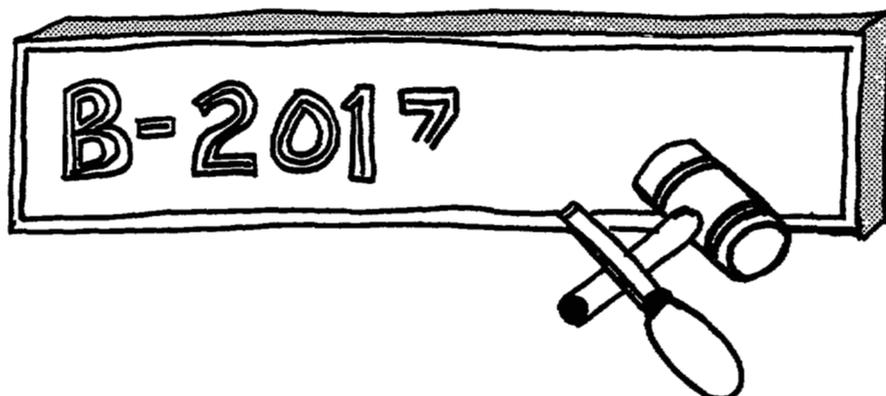
Another suggestion was to require carefully written topic sentences for each paragraph. The sentences themselves would constitute an outline for the attorney. While we generally approve of clear topic sentences for each paragraph, we are not sure that this suggestion will automatically solve the problem. At any rate, these techniques may be worth trying.

It is perhaps sufficient for us to say at this time that a multi-issue decision that sends us all over the draft to pull the relevant material, and to match facts, analyses, and conclusions relevant to each issue will probably be returned for a new draft in short order.

(c) Initial statement of the issues and generalized conclusions

Most decisions combine the initial statement of the issues with the statement of how the issue arose or who asked the question. A mention of who asked the question is quite appropriate here as long as time is not wasted identifying the requester and his relationship to his agency or organization. It is true that we occasionally tell the requester that s/he is not entitled to a decision but we will give one anyway since the subject matter is important or likely to recur. It seems to us that once we have decided to give the requester a decision, these little niceties are not of primary importance and could be saved for a later paragraph. Even better, why not put the explanation in a footnote?

Many of us, chafing under the third person mandate (see sec. A, 1 of this chapter), try to introduce the personal touch by using the requester's name throughout the decision. We think this custom, flattering though it may be to the recipient, detracts from rather than enhances ease of understanding for future readers. After all, we write for the ages! In 5 or 10 years, when the requester may have retired or left the agency, the use of a name instead of a title (Mr. or Ms. Smith instead of the Acting Secretary or the General Counsel) will confuse readers.



The statement of how the question arose (rather than who asked it) is another matter. In general, it seems better to combine that information with the statement of facts which follows.

In a multi-issue case, it is not necessary to present each question fully at this point. A general characterization of the issues might be sufficient. Here are two examples:

(1) Twelve employees of the Bureau of Hearings and Appeal (BHA), Social Security Administration are appealing settlements by GAO's Claims Division denying substantially similar claims for retroactive promotions and backpay. The employees allege that the agency denied them career ladder promotions in violation of the requirements of their collective bargaining agreement.

This statement should then be followed by GAO's general conclusion: The Claims Division settlement is affirmed. GAO finds no violation of the collective bargaining agreement which would support award of retroactive promotions and backpay.

Once we get into the specifics of this case, we find out that the alleged violation was a delay in processing the applications because the agency was waiting for the Office of Personnel Management to resolve a classification

question about the proper level for the higher-graded positions. There is no need to mention all that in our "up front" statement of the issue. It should emerge naturally from our statement of the facts. For the same reason, there was not much point in basing the "up front" conclusion on the fact that the agency acted properly in waiting for the Commission to complete its classification action before making promotions. No basis for that sort of particularized conclusion has been established yet. Putting too much in the general statement of the issues and the conclusion only holds up our orderly progression.

In the second example, presented below, it is clear that eventually we will have to deal with four separate questions. The time is not right yet. The detailed questions will be much more understandable once the facts are fully developed. In the meanwhile, won't this do?

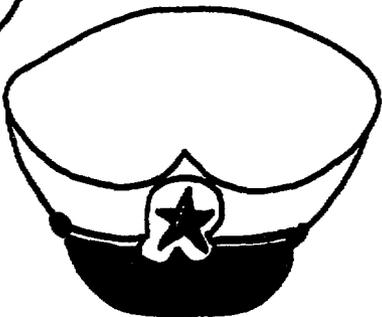
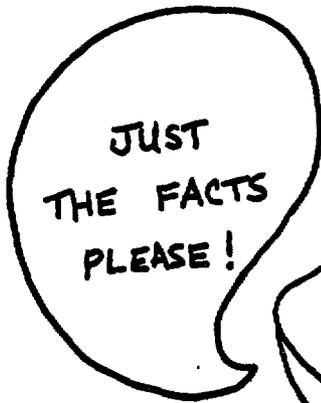
(2) The Assistant Secretary of the Army raises four questions about the entitlements of civilian employees transferred overseas to a higher payment for storage and shipment of their household goods, in view of an increase in weight allowances in recent amendments to the Federal Travel Regulations. Although each question involves a different set of facts, the answers all depend on whether an actual transfer took place after the effective date of the new regulations.



(d) Statement of facts

This is the place for the "who," "what," "when," and "where," but please, please:

(1) Consolidate and paraphrase. Do not quote directly from the incoming letter unless it is remarkably concise.



(2) Do not include facts and information which are not directly relevant to the resolution of the case (see discussion of logic and coherence, I-4 to I-7.) In some cases, it may be necessary to include some background information to put our facts in context. We would call that relevant.

(3) Do not use a lengthy quotation from a statute or regulation (here or anywhere in the decision) if it can be paraphrased accurately. Statutory and regulatory wording are notoriously abstruse. We don't want to lose our reader at this early stage. They may never catch up.

If the decision turns on the precise wording of a particular enactment, of course, the precise quote should be provided (taking care to eliminate irrelevant and extraneous material, which might be distracting). Just make it plain to the readers that they had better pay attention; this quote is crucial.

Our in-house panel of experts suggested that even when the precise wording of the statute or regulation is not crucial, many people are uncomfortable with paraphrases and would like to check out our references for themselves. Of course, we can mutter, "I gave them the citation, let them look it up themselves." The obvious answer is that "law books" are not readily available to our lay readers. We suggest that in appropriate circumstances, the attorney might consider reproducing the actual text of the law or regulation in a footnote.

(4) State the facts in chronological order, ending with the reason the case was sent to GAO, if appropriate. It is possible to choose a different order of presentation but make sure that the deviation will promote, rather than detract, from the reader's ease of understanding. As one of our panelists pointed out, ". . . a reader might find the 'flash-back' format confusing or less satisfactory than the chronological one he is generally accustomed to."

(5) If this is a multi-issue decision and there is a different set of facts for each question, just take care of one question at a time. Once question 1 is fully resolved, we can go back and pick up question 2, etc.

- (e) The Question (or question 1, if this is a multi-issue decision and we have chosen to discuss each question separately)

Now we are ready to get specific. If we have laid out our facts well, our question will flow quite naturally. Remember example 2 in (c), above? By this time, we have explained, in the statement of facts, that employees are only entitled to the increased shipment and storage rates of reimbursement if his/her "effective date of transfer" is on or after June 1, 1977. (We had alerted the reader right up front that the effective date of transfer was going to be critical in answering all four questions.)

The statement of facts also explained (or should have explained) that in question 1, we are dealing with a civilian employee whose household goods were in non-temporary storage in the States while he served overseas, stored at his own expense because the goods exceeded the applicable weight allowance at the time of storage. Once he signed up for an additional tour of duty, those household goods could be stored at Government expense. The employee did renew his tour of duty.

Without repeating those facts all over again, the question is: Does the employee's execution of a renewal agreement to serve an additional tour of duty at the same overseas station constitute a "transfer," for purposes of the amended Federal Travel Regulation on maximum weight allowances? If so, is the date of execution of the agreement the "effective date" of transfer?

There is an alternate way of handling the presentation of the facts and questions in this case. The statement of facts could explain at the outset that:

The following four sets of facts involve employees stationed overseas. The question in each case is whether the employee had been formally 'transferred' before or after the date on which an amendment to the Federal Travel Regulations increased the weight allowance for storage and transportation of the employee's household goods.

Then we proceed to lay out each set of circumstances separately.

Remember that a statement of "the question" typically ends with a question mark. Often the issue is obscured by attorneys who state that the matter before us "involves" certain facts. They set all this forth as a declarative sentence. We finish the sentence still wondering, "Precisely, what is the question?"

(f) Discussion (or analysis)

This is the point at which we discuss all the applicable laws and regulations, past GAO or court decisions, etc. If their contents have not been covered in the statement of facts, we should do that now. (See p. I-10, for discussion of quotations.) by now, we know that we must tie our arguments to the material developed in the previous sections.

If relevant, we may want to precede the GAO's discussion of the precedents with a statement of the principal contentions of the claimant, the protester, or the agency. We then proceed to agree with one or more of them or to refute them.

There are some differences of opinion among Management Committee members on whether attorneys should be required to discuss every question or allegation in the submission, no matter how silly they may be. This can be quite a chore, particularly when dealing with bid protests, when the protester throws in everything but the kitchen sink.

We suggest that all the substantive arguments be answered specifically. Then we can acknowledge the existence of the others (so we can never be accused of ignoring a point that the protester, claimant, etc. thinks is important), but dismiss them with some blanket statement like:

"It is not necessary to discuss the agency's alleged failure to offer meaningful consultation in view of our finding that . . ."

(g) Conclusion

This is the time for our specific holding, based on the finding or findings we have made in our discussion or analysis. It should not be a simple repetition of the digest or of the initial conclusory statement. It should represent the logical outcome of the information imparted in each of the previous sections of our decision.

Most attorneys do quite well with this paragraph. We can safely leave the discussion here.

B. Congressional Opinions

The requirements for a good decision are, for the most part, equally applicable when we answer a legal question raised by a congressional committee or by an individual member of the Congress. Certainly the basic

requirements for logic and coherence in our presentation are, if anything, even more important in this context. There are a few slight differences in format and style, which most attorneys know, but which we'll state for the record:

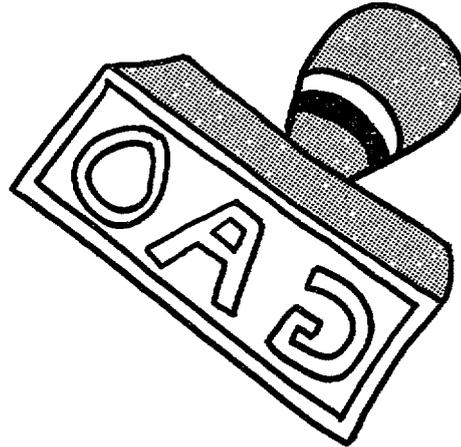
1. We do not use the impersonal "Matter of:" format for Congressmen. Instead, we write letters in which we frequently use the second person.

2. A good digest is just as important as it was for a decision. The only difference is that it is not made a part of the opinion letter itself.

3. We have been reminded by our Office of Congressional Relations that Congressmen generally file their correspondence by date. We have been asked to refer to the date of the request for an opinion, preferably in the first or second paragraph.

4. If we are responding to a "buck slip request"—i.e., a referral by an individual Congressman of a constituent's request for assistance—we should keep in mind the likelihood that the Congressman will simply turn over our letter to the constituent. This must be kept in mind as we tailor our opinions to meet the needs of the audience we expect to read them. (See discussion, Chapter II.)

5. The chances are pretty good that before we wrote the opinion, we solicited the views of the agency most concerned. This means that our opinion must not only dispose of the committee's or the Congressman's questions, but also deal with all of the arguments advanced by the agency. It is very tempting, especially when we are laboring under tight deadlines, simply to lay out all the agency's arguments and then just say, "We agree." Please don't yield to that temptation. Any "evidence" in congressional correspondence that we are rubber stamps for the executive branch and have no independent views of our own will send some committee chairmen into a towering rage. Once again, paraphrase rather than quote the agency directly. Above all, even if we agree with the agency, present a separate rationale.



6. The little courtesy sentences at the end of our congressionals amazed a few of our panelists. (You know what we mean: "We regret that our decision cannot be more favorable to your constituent.") It sounds insincere to them, which it may or may not be. It adds to the impression of hypocrisy when we express such sentiments in the passive voice; e.g., "It is regretted that" Mr. Socolar would prefer a more honest approach. "You can't really regret that the law is the way it is—at least, not publicly," he says. Instead, he suggests something like this: "We appreciate your constituent's frustration in finding that his claim can no longer be considered but the Statute of Limitations leaves us no choice."

C. Office Memoranda

Again, the overall requirements for a logical, coherent presentation, discussed in connection with decisions, are equally applicable to this product. There are some variations in format, however.

1. Indorsements

This format has been used for many years whenever a GAO Division or Office submitted its legal questions in writing. We write "Indorsement" as a heading, and start our answer with "Returned." In between the heading and "Returned," we reproduce (or use) the requester's submission, folded over, if necessary. The point of all this was to avoid repeating the question or questions, along with whatever supporting material or illustrations the requester saw fit to include.

"Indorsements"—whatever that term means in this context—is not a bad device when the written submission is brief (not over a page) and the questions are stated clearly and concisely. In a great many cases, however, the questions are abstruse or awkwardly worded and the attorney will have to restate them anyway. We also find that a long laundry list of questions, further expanded by a recitation of the requester's own opinions or "helpful" statutory quotations offered for our benefit, is very hard to keep in mind when, pages later, we start answering the questions.

Our advice is to use "Indorsements" only when, as stated above, the written submission is not more than one page long, and the questions are framed clearly and concisely. For all other submissions—or where the questions have been presented orally—please respond in memorandum form.

2. Memoranda

(a) When we have been asked for an official opinion—i.e., a ruling by the General Counsel, as opposed to the informal views of a subordinate official—the reply memorandum should be addressed to the head of the Division or Office. (Of course we should reference the requesting official, if not the head of the Division or Office, and make sure s/he has a copy.)

(b) The precise format for O.M.'s will depend on the nature of the submission. If there are only one or two questions, we may choose to reply in much the same manner as if we were writing a decision or an opinion letter to the Congress. We should, of course, eliminate "Matter of," the third person form of address, and inclusion of the digest up front. If there are several questions but the issues are not too complex, we think a simple question and answer format is useful.

In longer and more complex cases, we recommend use of a technique long employed successfully by attorneys in

Special Studies and Analysis. Each question, and a brief, succinct answer, are stated separately in what amounts to a cover memorandum. The supporting legal analysis is then offered as an attachment. This enables Division personnel to observe at a glance how, specifically, we have answered their questions. It also facilitates a reading of the analysis by those who need a detailed understanding of our conclusions. Many of our panelists thought highly of this technique and we understand that SSA's clients are equally pleased with it. Accordingly, we urge that it be used in appropriate cases.

CHAPTER II

HIGH FALUTIN' LANGUAGE

"Big Words And Little Ones"

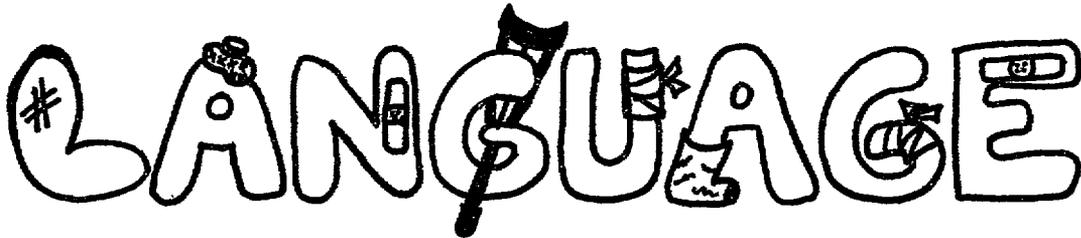
by Arthur Kudner, for his son

"Never fear big long words.
Big long words mean little things.
All big things have little names,
Such as life and death, peace, and war
Or dawn, day, night, hope, love, home.
Learn to use little words in a big way.
It is hard to do.
But they say what you mean.
When you don't know what you mean,
Use big words—
They often fool little people."

Answer the following questions true or false:

1. Legal language is an efficient shorthand way to communicate.
True _____ False _____.
2. If a decision is not comprehensible, it is the job of the reader to find out what it means. True _____ False _____.
3. It is not feasible to simplify legal language; legal terms are words of art. True _____ False _____.
4. Lawyers are not journalists and should not be expected to communicate like journalists. True _____ False _____.

If you answered any of these questions "true," you are advised to read every word of this chapter carefully.



If you answered them all "false," we congratulate you on your knowledge of communications theory but suggest that you read this chapter carefully anyway. Are any of the communications sins identified below familiar?

If you want to insist that some of the questions should be answerable with "that depends," you'll get no argument from us. Of course it makes a

difference who the reader is. A certain (limited) amount of jargon can creep into a decision to another transportation lawyer who, you feel sure, shares the same technical vocabulary and familiarity with the all-important regulations which govern such decisions. The same kind of language would be inappropriate if you were writing to a Congressman or to a Grade 6 Federal employee whose goods were damaged in shipment.

Alfred Kahn, former Chairman of the Civil Aeronautics Board, put it this way:

"If you can't explain what you are doing to people in simple English, you're probably doing something wrong."

Mr. Kahn was identifying the basic mistrust people feel when they ask a question, and get an answer that is over their heads.

The principal purpose of this chapter is to get all attorneys to write like real people talking to real people. The following examples of archaic, and inappropriate words and phrases are drawn from a random sample of OGC decisions. The list is by no means all inclusive; the terms on the list are only illustrations. Please do not assume that if a pet circumlocution missed the list this time, it is quite permissible to go right on using it. Stop and think whenever there is some doubt. Is this word or word usage likely to be part of the reader's vocabulary?

As a general rule of thumb, if you know of a simpler or more general term, use it in preference to legal jargon. (There are times when legal "words of art" are indispensable but they are not as frequent as some lawyers would like the public to believe.) For example:

<u>Not this</u>	<u>This</u>
"The protest is not for consideration of this Office."	"GAO cannot consider this protest."
"There is for application the rule."	"The rule is. . ."
"The amounts claimed are not for payment."	"The claim cannot be paid."
"It is determined here that. . ."	"We hold that. . ."
"Notwithstanding the complexity of the aforementioned issue,. . ."	"Although this is a complex issue,. . ."
"As a consequence,. . ."	(Skip it)
"The member was deployed overseas"	"(The claimant) was transferred overseas."
". . .a child acquired overseas. . ."	(born? purchased? kidnapped?)

Not this

"Reference is made to your letter of 5 April, 1981, in which you requested that we provide an opinion as to whether. . ."

"A dispute exists. . ."

"No statute or regulation exists. . ."

"Possible benefits vis-a-vis utilization of our personnel."

"Not from happenstance."

This

"This is in answer to your letter of April 5, 1981, asking whether. . ."

"There is a dispute. . ."

"There is no statute or regulation. . ."

"Possible benefits of using our personnel."

"Not by accident."

Do not convert a simple, strong verb into a noun. Wordy prose is born of such actions. For example:

Not this

give consideration to

make payment to

is applicable to

have knowledge of

This

consider

pay

applies

know

Don't turn verbs into adjectives, either. For example:

Not this

is determinative of

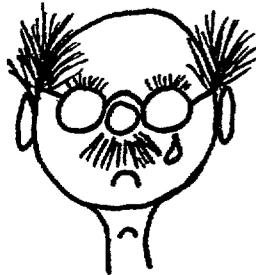
is violative of

This

determines

violates

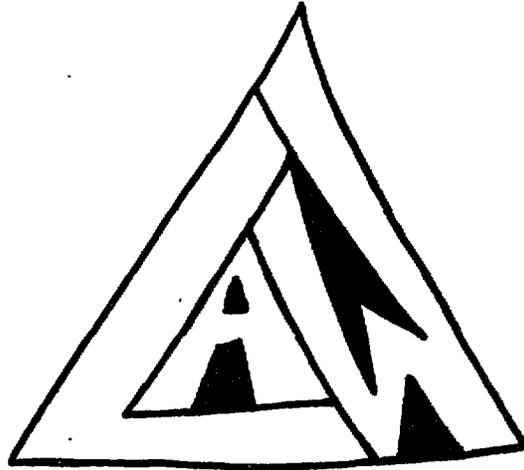
Mr. Socolar particularly dislikes a habit many of us have of injecting emotional content into our written products by using adjectival or adverbial modifiers excessively and unnecessarily. We don't add much content by stating that "very large sums" are involved or that the claimant was "sadly mistaken," or that we are "truly sorry." It is more persuasive to make a straightforward statement about the facts without attempting to intensify it with those types of modifiers.



Other pet hates of the present reviewing hierarchy:

"We should also point out. . ."	Why?
"We must conclude. . ."	Are you being forced?
"Reference is made to your letter of. . ."	"We refer" or use subject heading
"The instant case. . ."	"This case. . ."
"To the extent that"	"because"
"With regard to"	"about"
"With respect to"	?
"In connection with"	"We think"

(Mr. Socolar says he believes in God and country, but not in a point of law.)



For additional examples of unnecessary legalese, we have reprinted in the Appendix a checklist from the 1979 Effective Writing course. You are invited to add your own special dislikes. If they are generally accepted, they may become part of the taboo list. Remember, though, these lists are only examples. It is not necessary to memorize every word on them, but only to remember the principles of word selection which the words on the list are intended to illustrate.

CHAPTER III

HINTS FOR MORE READABLE SENTENCES

1. Avoid "pormanteau" sentences.

This common writing fault stems from the best motives in the world. We want to give readers their money's worth—a decision chock full of scintillating information in as little space as possible. Unfortunately,

some of us crowd so many thoughts into once sentence that we outstrip our readers' capacity to process all the information at one time.



Consider the following 90 word sentence, identified by many of our expert panelists as a horrible example:

"The issues presented in this case arising as the result of an appeal from a settlement of our Claims Division are whether a member may be reimbursed for transportation expenses for an attendant who accompanied his dependent mother where no travel orders were issued for the attendant and whether reimbursement for the dependent mother's transportation is limited to what it would have cost the Government to transport the dependent by military air in the absence of a showing that Government transportation was not available or its use was not practicable."

There are two separate issues presented here, strung together by a conjunction and some prepositions. The sentence doesn't even give us the benefit of some punctuation.

There was an even worse example in the October 1980 writing sample. It was a single sentence paragraph explaining an agency's numerous reasons for its position. The sentence was 167 words long. Although it attempted to separate the various agency reasons by means of semicolons, the readers were too glazed by its length and complexity to keep track.

We suggest that as a general practice, only one idea should be presented per sentence, or that several sentences be used, if necessary. It's overloading that is objectionable, not the number of sentences per paragraph.

2. Run-on sentences.

A run-on sentence is really two sentences linked by a word like "however." "However" is a weak sentence starter at best; however, if you must use it as a "joiner," put a semicolon before it and a comma after it. (We hope you immediately recognized the sentence above as a "run-on.")



In another example from our writing sample, the attorney didn't even bother to supply a linkage word to make his two sentences one. He thought he could do it with a comma:

"One other block was available but not marked, that was the mode of transportation to be determined by the transportation order."

3. Inappropriate placement of modifiers.

This is a word order problem, rather than an example of a grammatical mistake. It comes about because the writer leaves a phrase dangling, instead of placing it next to the word it is supposed to modify.

Sometimes the result is silly. This is one of Mr. Van Cleve's favorite examples:

"The following facts are presented for an advance decision by the Assistant Secretary of the Air Force."

4. Subordination.

This writing fault has a lot in common with the portmanteau sentence, discussed above. One can bury a perfectly good idea in a morass of supplementary or incidental detail. Consider this example:

"Therefore, since an employee was ordered to work 5 hours at the end of the pay period when she was scheduled to take off, and since she had already accumulated 10 credit hours, and since she had already worked 40 hours that week, the 5 hours of work are overtime."



There are three subordinate clauses beginning with "since." If we were reading aloud, we would be breathless by the time we reached the main idea.

Come to think of it, maybe that's not a bad idea—reading aloud, we mean. Try out awkward paragraphs on a spouse or a friend who is not familiar with the subject matter. If they can juggle the information they have been given and keep it aloft until they reach the main idea, we are probably placing our clauses correctly.



5. "Elegant variation" and inappropriate repetitions

These two writing faults are a little less basic than the others discussed above. Even professional writers are sometimes guilty of these sins. Nevertheless, they each contribute to the murkiness of our prose and it is therefore worth making a conscious effort to avoid them.

(a) The term "elegant variation" was coined by H.W. Fowler (A Dictionary of Modern English Usage, Oxford University Press, 1950). He used it to describe a vice of "second-rate writers, those intent rather on expressing themselves prettily than on conveying their meaning clearly. . ." These writers think it's terrible to use the same word twice in a sentence or in a paragraph or within some other limit. They use all their ingenuity to think up synonyms which may or may not mean exactly the same thing. Either way, they introduce confusion.

For example, some words are words of art. An "obligation", in appropriations terminology, is more binding than a "commitment" or a "duty." It might be safe to use them interchangeably in a literary essay but not in a GAO decision.

On the other hand, some terms used in a legal context really are interchangeable but our lay audience doesn't know it. If we suddenly introduce a new word to refer to the same concept we called by a different name a little earlier in the decision, the readers start to wonder if there is a subtle difference they are missing, feeling resentful at what they suspect is "double talk."

Recently, the Program Analysis Division sent us some comments on certain changes to title 31, proposed by the House Law Revision Counsel. PAD was very upset to find that the term "make expenditures" in present law was being changed to "spending." Since PAD could think of no reason for the change, it immediately became suspicious that the two words were not equivalent and someone was trying to put over a substantive rather than a merely cosmetic change.

(b) Inappropriate repetition is the other side of the coin. How many of us have not wanted to tear our hair at the insistence of military law attorneys on calling all servicemen "members"! Surely, at some point in a long dissertation about a "member's" marital troubles, we could call him the sergeant, or Sergeant H. A first cousin to that example is, "The claimant claimed payment."

While inappropriate repetition is a less heinous sin than inappropriate variations—or at least less dangerous—our decisions would be more readable if we learned to use pronouns or proper names more often.

6. Overuse of the passive voice

If you've ever scanned the editorial comments in the margins of the audit reports you review, you will notice that almost every page has an admonition to change from the passive to the active voice. Don't feel superior! Our decisions are just as bad, but we have not had editors, up to now, who would tell us how deadly dull and stilted our prose sounds when we use too many passive constructions.

When we write in the passive voice, the subject of the sentence changes place with the object of the sentence, and the whole focus of attention shifts with it. Sometimes, this construction is intentional. For example, there is nothing wrong with:

"The judgment was paid by GAO last week."

This statement, in the active voice, would be:

"The GAO paid the judgment last week."

However, "the GAO" is not the important part of this statement. We are more interested in letting the irate claimant or Congressman or court know that "the judgment" was paid last week.

On the other hand, some writers tend to specialize in the passive voice. In their drafts, everything is happening to someone or something.

People never seem to take action or to have opinions directly. For example:

"These latter observations made by the Regional Director were ...unfortunate..."; or

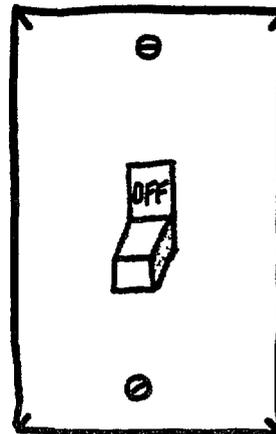
"These expectations were held by the Special Police Officers in question..."

Many of us use the passive voice when we are a little nervous about accepting responsibility, on behalf of GAO, for an unpopular result. For example:

"It is regretted that the decision could not be more favorable," rather than "We regret..."; or

"There is for application the rule...," instead of "The rule is..."

In addition to the fact that too much passivity is boring, it leads to artificial forms of expression that may turn many readers off. (See Chapter II on High Falutin' Language.)



7. Restrictive and nonrestrictive clauses

The "which" vs. "that" controversy doesn't raise too many temperatures today, even among some modern grammarians. One of our inside panelists, however, commented that GAO decisions and other writings have a plethora of "whiches", most of which should be "thats", and this makes for wearying reading. We therefore offer you the generally accepted distinction. "Which" is a nonrestrictive, nondefining pronoun; "that" is a restrictive, defining pronoun. Strunk and White (see Appendix) illustrates the difference this way:



"The lawnmower that is broken is in the garage."
("that" tells which lawnmower we are talking about).

"The lawnmower, which is broken, is in the garage."
("which" simply adds some information about the only lawnmower in question.)

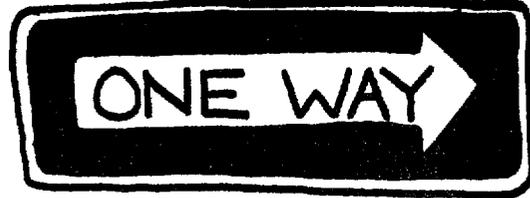
An easy test which usually works is to put commas or parentheses around the "which" phrase. If the sentence is complete without the "which" phrase, "which" was the correct word.

Most of us overuse "which", because it somehow seems more precise. If the above test seems too time consuming, change all "whiches" to "thats". The chances are good that we'll be right 95 percent of the time.

CHAPTER IV

GRAMMAR, SPELLING AND PUNCTUATION

It is a relief to offer some non-controversial guidance, for a change. These rules are a little like the convention in this country of driving on the right side of the road. There is nothing inherently right about the proper placement of an apostrophe, for example. There is, however, general agreement among those who specialize in this sort of thing about what the rules are, and a general, though unstated, agreement among the literate public to adhere to them. Since the Comptroller General insists on signing literate products, we should adhere to them too.



We have identified and discussed below some common mistakes in this area. (Please don't waste time hunting for similar mistakes in the various chapters of this Guide. We said they are common mistakes.)

We have also listed in the Appendix some standard authorities, in case some doubt or controversy should arise in the future between an attorney and a reviewer, between a reviewer and the Deputy General Counsel, etc. All of these references will be available in the law library. In addition, we are ordering individual copies of Strunk and White for those who were not with us 4 years ago when we made the last general distribution.

A. Grammar

Some time in the last 20 years, when many of us were in grade school, teachers stopped emphasizing—or maybe even teaching—English Grammar as a formal subject. That's a pity! We may lack a common frame of reference. We acknowledge that many people are instinctive grammarians, in spite of a lack of formal training. For those who are not, we recommend some of the standard texts, listed in the Appendix for perusing in spare time. We cannot cover adequately all grammatical lapses in this short chapter.

1. Agreement of all verbs as to tense

One of our panelists commented that by the time some writers reach the end of a long, involved sentence containing several clauses, they forget which tense the first verb was in, and the second or third clause verbs are inconsistent. This results in a sentence which starts in the present tense and winds up in the past tense (or vice versa).

A simple past event is recorded in the past tense: "The agency reported the theft." The past perfect tense is used when the event referred to is farther in the past than another past event: "The agency reported to the Office of Controller that a theft had taken place."

The above examples are in the usual past tense sequence. One would not normally mix up present and past tenses by adding a dependent clause

in the present tense to those sentences. There are some exceptions, however. If the dependent clause is reciting a timeless truth or a fixed characteristic, it would be permissible to mix tenses. For example:

"He misunderstood the rule that an award always goes to the lowest bidder unless" If we had said "An award always went to the lowest bidder," the whole meaning of the sentence would have been changed.

It is also permissible to switch tenses when the dependent clause is a sort of parenthetical interpolation. For example:

"The Deputy General Counsel, who regards poor grammar as personally offensive, sent back the draft for rewriting."

There are a few other exceptions which can be found in one of the references listed in the Appendix. Unless you are sure that your sentence qualifies for an exception, we suggest that you assure agreement of tenses by circling each verb in the sentence. Are all verbs in the same tense?

2. Subject-verb agreement as to number

Subjects and verbs must agree in number (singular or plural) as well. If we start with a singular noun, for example, we must use the singular verb form; e.g., "The supervisor promulgated a procedure for avoiding duplicate check payments which eliminate 80% of the errors." The verb form should be "eliminates," since a "procedure," a singular noun, is doing the eliminating.

The problem gets sticky when there is a compound subject. Consider this example: "Each attorney's attendance record and monthly production are factors in considering him for promotion." If we don't realize that the subject is "attendance record and monthly production," rather than "each attorney," we might mistakenly use the singular verb, "is."

Sometimes we get distracted by some intervening words. For example:

"The Committees refused to consider the amendment since the amount of the funds were over the budget ceiling."

The underlined verb should be "was," of course. It is the action word for "amount," a singular noun, and not "funds," a plural noun.

The final category of trouble spots is the verb form which follows correlative conjunctions--i.e., "either--or" or "neither--nor." It is easy enough to use the right form if the correlative word connects two plural nouns: "Neither the attorneys nor their reviewers are satisfied with this Guide." Similarly, if the correlative connects two singular nouns, the verb form is singular: "Either the General Counsel or his Deputy is authorized to sign O.M.'s."

We get into trouble, though, when one noun is plural and the other is singular. What does one do with this one? "Neither the Associate General Counsel nor his reviewers are (is?) pleased with the new directive."

The authorities tell us to duck, if possible—that is, to substitute a noncommittal verb: "Neither the Associate General Counsel nor his reviewers expressed pleasure with the new directive." Another alternative is to change the construction: "The Associate General Counsel is not pleased with the new directive, nor are his reviewers." Both are a bit cowardly. There is some sanction among authorities for using the verb form most appropriate to the closest of the nouns. In the example above, "reviewers" is closest to the verb so the verb should be plural. For lack of a better solution, we suggest adopting that rule.

3. Nonparallel structure

If we have parallel thoughts, we should put them in parallel form. A series, for example, can consist of all words, all phrases, or all clauses, but they should not be mixed up. The separate items in the series must be grammatically similar and of equivalent value. Whether we put our series in tabular form or just string out the items, separated by commas, we ought to be able to complete the sentence by using any one item in the series alone. Here is an example of efficient use of parallel structure:

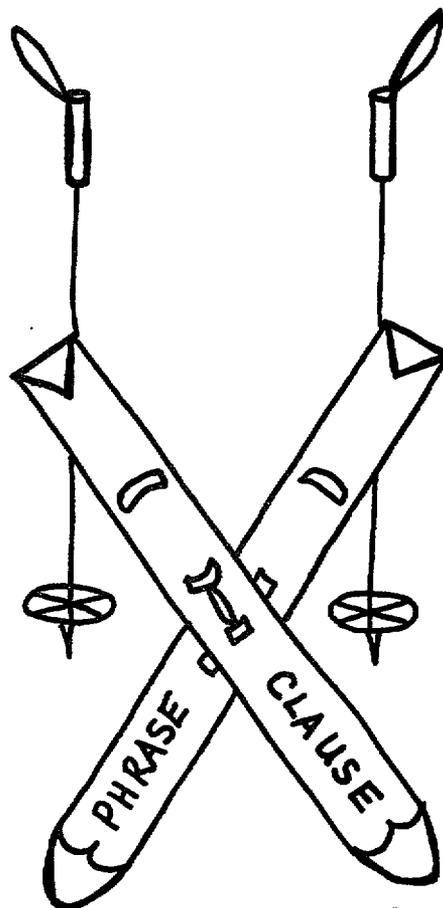
(a) "Official Government passenger travel is procured directly from air carriers, and travel agents are not used because

—direct procurement is more efficient and economical;

—reservations, cancellations, or changes in travel schedules are more readily effected with less errors; and

—the statutory audit and settlement of carrier accounts is better facilitated and overcharges are more quickly recovered."

(b) "Descriptive literature which may be required pursuant to Armed Services Procurement Regulation (ASPR) 2-202.5 (1976 ed.) includes only information necessary to determine the acceptability of a product, to enable the agency to determine whether the product meets the specifications, and to establish exactly what the bidder proposes to furnish. In that connection, ASPR 2-202.5(d) provides that the IFB must state what literature is to be furnished, why it is required, and how it will be considered in the evaluation of bids."



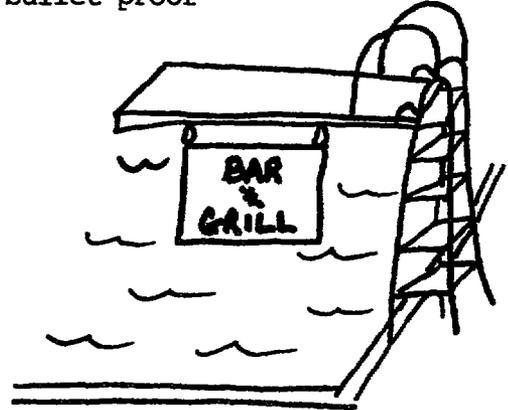
In this second example, the first sentence is nonparallel and the second sentence is parallel. Notice how much easier the second sentence is to understand?

4. Dangling participles and other misplaced modifiers

We don't often misplace modifiers, but we shouldn't ever. Improper placement of words or phrases can make a sentence anything from ludicrous to obscure. Thus:

"Israel has developed a bullet-proof helmet for soldiers made of plastic." Not very likely; try, "a bullet-proof plastic helmet."

"The bars he patronized frequently are mere dives." The word "frequently" here is technically called a squinting modifier, since "frequently", as used in the sentence, looks in two directions, and we don't know the author's intention. Is the sense of the sentence, "The bars he frequently patronized. . ." or ". . . are frequently mere dives"?



"Neither woman was able to lift a 25-pound bar bell with one hand over her head as required in the Civil Service examination for the job." Although the picture presented has its attractions, the phrase "over her head" in fact belongs after "bar bell."

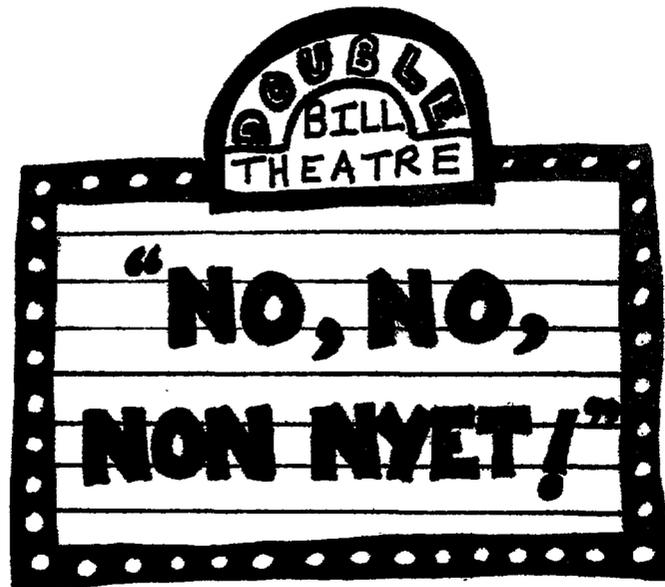
"She asked for time off to testify at a hearing into charges of sexual, ethnic and racial discrimination against the American Telephone and Telegraph Company." Discrimination against the company? It makes sense only when the underlined phrase is placed right after "charges".



"When dipped in melted butter or Hollandaise sauce, one truly discovers the food of the gods." Here the participial phrase, "when dipped . . .", is out of contact with the noun it is intended to modify, "food," and is in close contact with a word it does not modify, "one."

Finally, Fowler reports that a commercial firm sent the following letter to a creditor, "We beg to enclose herewith statement of your accounts for goods supplied, and being desirous of clearing our books to end of May, will you kindly favor us with a check in settlement per return" The creditor, reasonably, replied, "Sirs—you have been misinformed. I have no wish to clear your books."

The firm's bookkeeper wished to clear his books by the end of May, but, by having his participial phrase, "and being desirous of clearing our books," modify "you," he asked for the kind of response he got.



5. Double Negatives

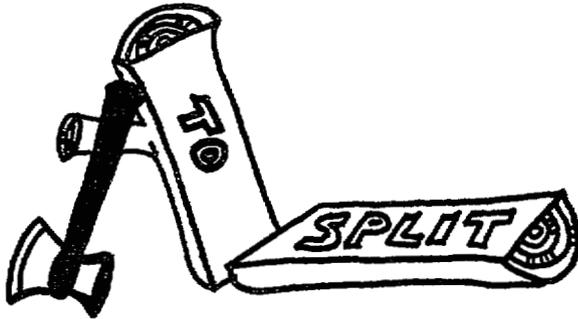
Writers must be aware that double negatives arise not only from the obvious words or prefixes such as "not," "nor," and "un-," but also from words of negative meaning such as "deny," "forbid," or "forsake."

The Management Committee fears that double negatives are most often used to mask uncertainty, doubt, or cowardliness. Let's abandon such use. Occasionally, and in the hands of a skilled writer, a double negative can appropriately convey a shade of doubt or blur an otherwise unpleasantly stark statement. If a double negative is used, be sure that it expresses that kind of nuance and is not used as a shelter from uncertainty or inadequate legal research.

6. Split Infinitives

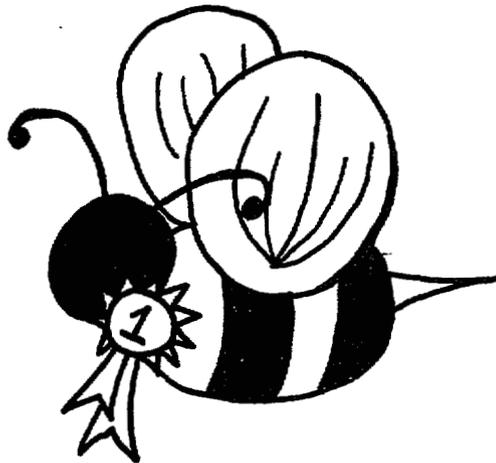
Since the Deputy General Counsel's dislike of split infinitives is now clear to all, he explains the prevalence of this habit to an uncertainty on the part of drafters and reviewers alike of what an infinitive is. An infinitive consists, always, of the word "to", followed by the verb: to run, to speak, to write. Very fussy grammarians (e.g., the Deputy General Counsel) don't like any split infinitives. Others today tolerate a split when speech patterns and ordinary written usage suggest that avoiding a split sounds pedantic. Be that as it may, a phrase in one

of the opinions reviewed, "to now be indebted," should be written "now to be indebted." "To timely acknowledge" and "to timely file" are, however, acceptable, since otherwise we would write, "to acknowledge [or file] in a timely fashion"—which is lengthy and a bit stuffy. "To adversely affect" is more grammatically and just as simply written as "to affect adversely." Please be guided by the admonition that to consistently and with a great number of words split an infinitive must be avoided.



B. Spelling

Our instinct may lead us astray. Unless we—or our secretaries are old spelling bee champs, when in doubt, look it up.



C. Punctuation

We can't beat Jodi Crandall's "Punctuation Guide," which some of you may still have from her course two years ago on Effective Writing. It is reproduced in the Appendix for your edification and ready reference.

CHAPTER V

CITATIONS, ABBREVIATIONS AND ACRONYMS, CASE TITLES

A. Citations

1. How to cite

The Harvard Citator (you all have copies, don't you?) is our standard reference. If previous OGC instructions are inconsistent, consider them superseded by this Guide.

2. When (and how much) to cite

Of course we want support for statements and conclusions of law. Some of us practice overkill, however. It is not really necessary to cite every decision ever rendered by this Office to back up our assertions. As a general rule, choose one or two of the most recent decisions on the point. They probably contain references to all the earlier cases anyway.

There are a few exceptions to this rule:

- (a) When an older case is a "landmark" decision on the point;
- (b) When the more recent decisions do not discuss the point we wish to make but only mention them with approval; and
- (c) When we are trying to illustrate how "long standing" a long standing principle really is. In such cases, pick references selectively to indicate the span. They needn't be exhaustive.

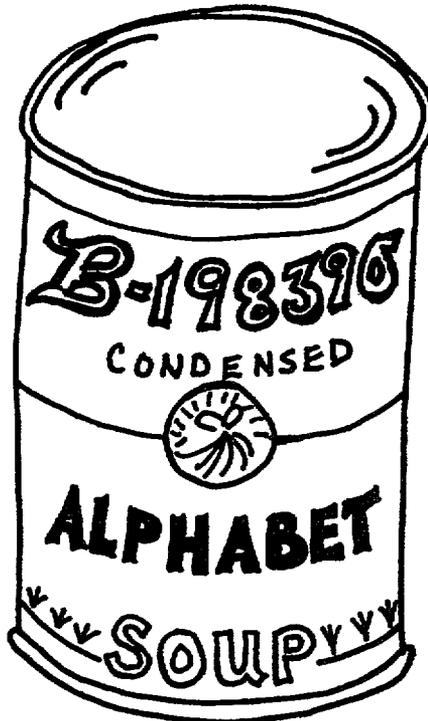
Remember, though, attorneys are accountable for every decision they choose to cite. Each decision had better support the point for which it is cited or the draft will bounce. This is another reason to choose references with discretion.

3. Where to place them

There was a decided split of opinion among the panels on this question. The outside experts found our placement of citations right in the body of the decision distracting. They would relegate them all to footnotes. Some Management Committee members found it even more disconcerting to have citations in footnotes. It interrupted their concentration by drawing attention to the bottom of the page or wherever they are located. (The in-house panel was silent on this subject.)

We compromised on the following rules:

- (a) Do not start sentences with citations. They should be placed after the point they are supposed to support.
- (b) Include only the principal citation in the body of the decision. If additional corroborative citations are necessary, put them in a footnote at the bottom of the page.
- (c) When citing statutes, do not cite them in their full form (a la the Harvard Citator) after the first time. The popular name (if previously referenced) or some other shorter reference--e.g., "the 1964 Act," or "the Trade Act Amendments"--should be used instead.
- (d) Use footnotes sparingly. It slows the typing process considerably because of the need to make special spacing adjustments, etc.



B. Acronyms and Abbreviations

We use acronyms and abbreviations to make our decisions easier to understand. Sometimes, though, we get a little carried away. The result is often a text that looks like alphabet soup--particularly if our decision concerns a great many agencies and subagencies. There are no firm rules on this topic except to use a little common sense. Here are a few suggestions.

1. Be consistent. If we start out by referring to the FCC, let's keep it that way. If we try to provide variety and use "the Commission" instead, someone will be confused.

2. Why bother with an acronym or abbreviation which we will never use again? Be sure they are really needed. We all tend to use too many.

3. A related nit-pick is our tendency to use unnecessary parenthetical descriptive terms, e.g., ". . . fire fighting and fire protection services (hereafter fire services)" It is not necessary to explain or justify a subsequent use of the words "fire services".

4. Don't create acronyms for temporary commissions, ad hoc committees, or other organizations which may not be familiar to our readers. For example, if we are writing about the National Center for Less Arbitrary Justice and wish to refer to it later in a shorter form, call it "the Center." If we call it the "NCLAJ", we may be met with a blank stare, figuratively—especially if the first reference and the acronym are far apart in our decision. (Of course, if there are several Centers in the decision, we will have to go back to the drawing board to distinguish this Center from all the others. (Whatever acronym we choose to use, remember that the name of the game is ease of understanding.)

C. Case title, a.k.a. "Matter of:"

OGC groups who are writing formal decisions to or about specific individuals or companies are lucky. The "Matter of:" line writes itself. They will naturally use the name of the claimant or of the bid protester to provide a title for the decision. The rest of us must work a little harder.

At present, some "Matter of" designations are three or more lines long. Some read like mini-digests and are equally complex. Remember, this is only a heading, a tag, a title. It need not tell the whole story. For example:

"Matter of: Farmers Home Administration reservation of funds to indemnify Colorado public trustees against loss resulting from release of trust deeds"

could be shortened to

"Matter of: Farmers Home Administration--Indemnification authority"; and

"Matter of: Reconsideration of authority of SBA to leverage Minority Business Resource Center investments in minority enterprise small business investment companies"

could become

"Matter of: SBA--leveraging of minority business investments"

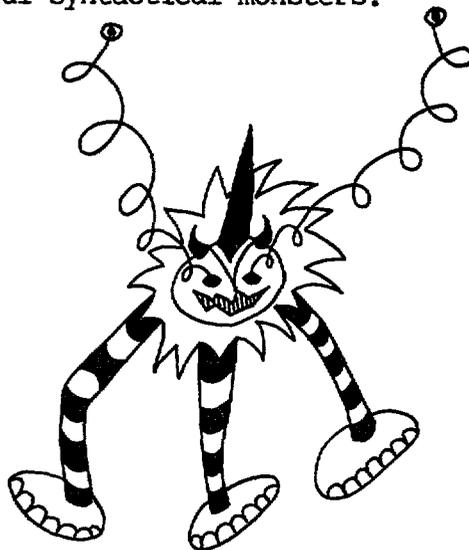
CHAPTER VI

DIGESTS

Digests have several purposes. Many recipients and users of our decisions rely on the digest almost to the exclusion of the text. It is therefore critically important that the digest be clearly written, accurate, and understandable to these readers. This is an area that deserves much more attention in the months to come from all of us.

Digests are also an important research tool for OGC attorneys and others who search through our Index-Digest system for precedents and answers to recurring problems. Many arbitrary requirements flow from that fact.

- (a) Each legal principle or holding should be digested separately, even if several different holdings appear in the same decision. Each will eventually be transcribed on its own white file card. It must therefore be a complete and self-contained statement.
- (b) Each digest should preferably have 90 words or less and certainly no more than 180 words. The reason is obvious. It must fit on a file card, preferably on one side although it may be completed on the other side if necessary. In the past, instructions on how to digest were issued by the Chief, Index-Digest Section. They were fiendishly ingenious, designed to cram a maximum amount of information into a minimum amount of space. We were therefore told that all digests should be no more than one sentence long. Our thoughts were to be strung together by a series of connective words like "since," "which," and "therefore." To compensate for the need for connectives, we were to drop all articles—"a," "the," etc., and some prepositions. These old rules led to dreadful syntactical monsters.



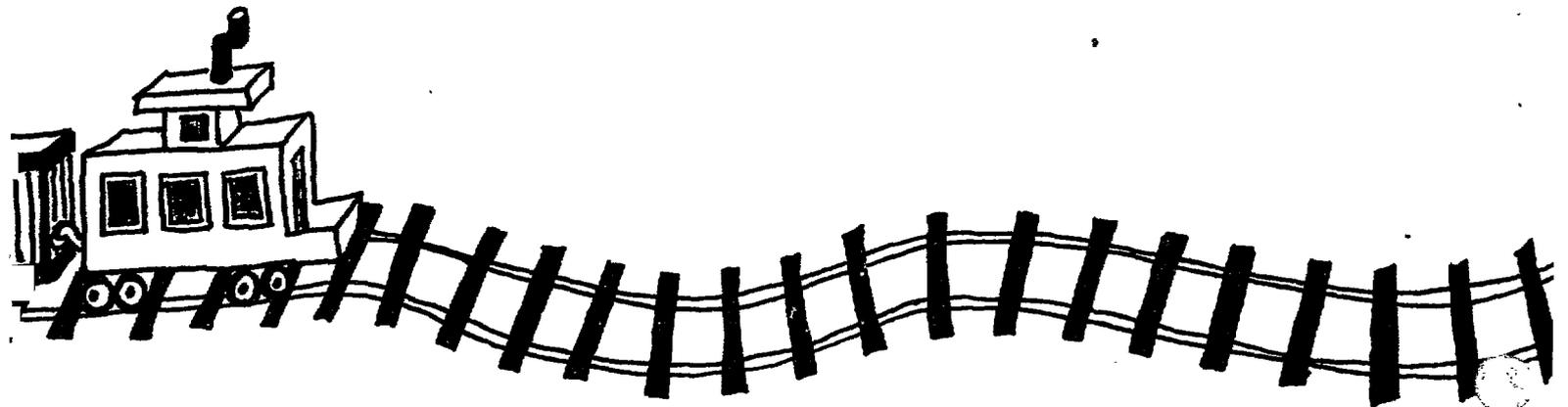
BEWARE OF GOBBLEDYGOOK!

It is no wonder that our products regularly appeared in the Washington Star, under the "Gobbledygook" quote of the week. In case you haven't heard, those old rules have been superseded. (Consider this Guide as a formal update of OGC Instruction No. 73-5, September 18, 1973.) What is "in" now is short, readable sentences, each expressing a complete thought and each logically related to the sentence before and after it. Keep the articles and prepositions. We will make up for the extra letters by dropping the "whiches" and "sinces."

- (c) Don't use the digest to outline the facts of the case. Try to crystallize the result or holding of the decision, as if we were writing a headnote for one of the better judges. It should summarize results; not the means used to achieve those results.

The following digests were selected from our recent writing samples. One is pretty good, and the other defies comprehension by all but the writer's peer group. We don't think it is necessary to say which is which.

- (1) Notwithstanding erroneous payment to defaulted contractor, Miller Act performance and payment bonds sureties who undertake to complete contract under takeover agreement and to satisfy claims made against payment bond are entitled to progress payments which became due after takeover and amounts earned by contractor prior to default not to exceed actual expenses incurred.
- (2) When agency determines that it has "misinterpreted order canceling all solicitations pending market analysis and survey of needs, solicitation should be reinstated. Bids which have expired because solicitation was canceled generally may be revived upon reinstatement. However, when original bids have been returned to bidders, propriety of revival depends on whether, under facts of particular case, integrity of competitive system has been compromised.



APPENDIX

ALTERNATIVES TO LEGALESE AND LETTERESE

<u>Original</u>	<u>Alternatives</u>
above-mentioned aforementioned	this, that, the, or a shortened form
at the earliest practicable date	soon, as soon as possible
communication	letter, memo, (tele)phone call
disturb	change
final action taken	final action
forthwith	immediately; soon; * * *
hereafter	after; (change structure of sentence)
herein	this, the, here
in accordance with	with, (change structure of sentence)
inasmuch as	because, since
incident to	because of, from, with
in conjunction with	with
in pertinent part	* * *
instant (case)	this
in this regard	therefore
no proper basis	no basis
pursuant to	under
receipt is acknowledged	we have received
reference is made	we refer; subject heading; * * *
said same personnel, case, etc. such	the, this, that, these, those
thereof, thereto	* * *

this is in reference to	* * * or subject heading
together with	with
transmitted herewith	we are enclosing, we are forwarding, we are attaching, etc.
whereas	in spite of, considering that, because
which (court)	the, this, etc.
with regard to	about

LATIN, FRENCH, AND OTHER FOREIGN LANGUAGE WORDS

If you can find a common English equivalent, use it, at least with the general reader. Save the et seq., supra, res judicata, and in lieu of for other lawyers!

REFERENCES

GRAMMAR AND WORD USAGE

Bernstein, Theodore M., Do's, Dont's, and Maybe's of English Usage, N. Y. Times Books, 1977;

Bernstein, Theodore H., The Careful Writer, N.Y. Atheneum, 1965;

Fowler, H. W., A Dictionary of Modern English Usage, Oxford University Press, 1950;

Fries, Charles C., American English Grammar, Prentice-Hall, N.J.;

Newman, Edwin, Strictly Speaking, Bobbs-Merrill, N.Y.; and

Strunk, William & White, E.B., The Elements of Style, Macmillan Publishing Company, N.Y.

In addition, the following two references are in the 6th floor library. Follett, Wilson, Modern American Usage, Hill & Wang, New York; Morris, William and Mary, Harper Dictionary of Contemporary Usage, Harper and Row, New York.

SPELLING

Any standard dictionary. We suggest that you use the first listed spelling of a word, which is generally stated to be the "preferred" term in most dictionaries.

PUNCTUATION

Fowler (listed under Grammar and Word Usage, above) has several sections on various punctuation marks. See also Jodi Crandall's Punctuation Guide, reproduced below.

PUNCTUATION GUIDE

USE A COMMA TO:

1. Separate independent clauses joined by a coordinating conjunction (and, but, or, nor, so, yet)

I answered the phone, but no one was on the other line.

2. Separate coordinate adjectives modifying the same noun

Her quiet, cautious manner belied her sense of humor.

Compare: He was a successful real estate salesman.

3. Separate items in a series

The secretary ordered envelopes, letterhead stationery, and telephone message pads.

4. Set off introductory adverbial clauses or long introductory phrases

After he scored the winning touchdown, the stands erupted in celebration.

In the spring of the last year of the war, . . .

Compare: On Friday everyone left early.
On Friday, everyone left early.

5. Set off parenthetical elements and nonrestrictive elements

His supervisors, Mrs. DeWitt and Mr. Davidson; both gave him a good performance evaluation.

The nuclear energy report, which was issued earlier this week, has attracted a lot of Congressional reaction.

The building, previously open 24 hours a day, is now closed after 6 p.m.

You notice, however, that the letter is dated January 7, 1977.

6. Set off persons addressed directly

Ms. Lewis, could you come into the office please?

Is it true, Mrs. Samuelson, that you offered to fund the conservation project?

7. Separate items in addresses, dates, locations

The letter was addressed to Mr. James Hessick, 156 Main Street, Cleveland Heights, Ohio.

Your letter of July 16, 1976, arrived on August 15.

I lived in Pittsburgh, Pennsylvania, until recently.

8. Separate tag questions from the main sentence

He offered to proofread the report, didn't he?

They'll be late again, won't they?

9. Set off a short answer from the rest of the sentence

Yes, Mr. Klimmich will provide the transportation.

No, I didn't see the new regulation.

10. Set off the salutations in an informal letter and the closing of any letter

Dear May, Dear Dad, Sincerely yours, Yours truly, Respectfully,

11. Introduce an example

Some holidays are 3-day weekends (e.g., Memorial Day)

Some holidays, such as Memorial Day, Labor Day, etc. are 3-day weekends.

He gave us three instructions: namely, get to work, get to work, get to work.

USE A SEMICOLON TO:

1. Separate independent clauses not joined by a conjunction

Volume 1 ends with the Civil War;
Volume 2 begins there.

2. Separate clauses joined by a conjunctive adverb

The fire alarm sounded; however, people kept on working.
(notice the comma following the conjunctive adverb)

3. Clarify, when commas are used within items in a series

The chapters cited were 13, pp. 16-19; 17, pp. 42-85;
and 19, pp. 90-96.

4. Separate items in a series which are clauses

The report was read; the minutes were approved; new
business was discussed; and the meeting ended.

USE A PERIOD TO:

1. End a declarative sentence or imperative sentence

The cherry trees were in bloom early this year.

Get me a reservation for Thursday.

2. Indicate an abbreviation

The plane arrives at 8:30 p.m.

All departments—personnel, payroll, purchasing, etc.—should send representatives to the meeting.

I live in Washington, D.C. (notice that only one period is used when an abbreviation ends a sentence)

3. End an indirect request

Would you please send us the documentation.

USE A COLON TO:

1. Introduce a long quotation

Section 5(a) of the Federal Travel Regulations (FPMB) states:

2. Introduce a list

The office hires all types of employees; for example: economists, accountants, psychologists, secretaries, statisticians, computer programmers, etc.

3. Set of a salutation in a formal letter

Dear Sir:

Gentlemen:

To Whom It May Concern:

USE A QUESTION MARK TO:

1. End every direct question

Where did you send the Kohler file?

USE AN EXCLAMATION POINT TO:

1. End an exclamation or after words which express strong feelings

Help !

A trip around the world !

How wonderful!

USE A DASH TO:

1. Indicate an interruption in the sentence

Mr. Harry—did you say?

Rogers?—Will give the presentation.

2. Indicate hesitation or confusion

He said—er—let me find his exact words—

3. Precede a summary or series

The speaker gave us his recipe for success—namely, don't be satisfied, keep on trying, keep on learning, and get to know the right people.

Several roads lead to the center of the city—e.g., Wisconsin Avenue, Georgia Avenue, Connecticut Avenue, etc.

USE PARENTHESSES TO:

1. Set off material which is only indirectly related to the thought of the sentence, and thus interrupts considerably

We are denying your claim since you are still liable for the debt (see para. 2-1.6).

This option (see p. 67) is frequently overlooked.

USE QUOTATION MARKS TO:

1. Indicate that words are quoted from another source

"Inflation will continue to grow," Mr. Jenkins said.

Mr. Jenkins said, "Inflation is our most serious domestic problem."

"Inflation," said Mr. Jenkins, "is our most serious problem."

USE A HYPHEN TO:

1. Divide words at the end of a line

He said that he would have to bring in substitutions to finish the game.

2. Indicate some compound words
3. Join together certain prefixes and roots, if they would be confusing
4. Join two or more words before a noun into a compound modifier

It was a long-standing custom of the office.

5. Indicate compound numbers

She celebrated her twenty-first birthday yesterday.

We stopped counting after number ninety-nine.

USE AN APOSTROPHE TO:

1. Indicate possession

the man's coat; the men's coats; the lady's coat; the ladies' coats.

Smiths' Deli; the Thomases' home; Jane's salary

2. Form the possessive of a singular noun ending in s, x, and z.

Jones's Store; fox's tail; James's story

3. Form the plural of figures, letters, signs

There were too many x's on the final copy.

Use +'s and -'s for true and false.

Her grades are all 2's.

4. Indicate omission of letters

They won't try to get here before dinner.

Didn't you say he'd be here on time?

I'll get here at 8 o'clock.

NOTES

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