

## Legal Writing: Ten Tips from the Trenches

By Elizabeth G. Yeargin

During my tenure as an adjunct professor of Legal Research and Writing at the University of Akron School of Law, many of the same legal writing mistakes came across my desk time and time again. My advice to my students then and my advice to lawyers now is outlined in the following list of grammar, punctuation, and usage tips.

**1. Avoid passive voice when possible.** Passive voice in a sentence occurs when a writer makes the object of an action into the subject of a sentence. An example of passive voice occurs in this sentence: "Steve was awarded the CALI Excellence Award in Administrative Law." Steve is the object of the sentence because he is receiving the award; however, Steve is made the subject of the sentence and passive voice is used with the verb "was awarded." To make this sentence into active voice, you can restructure the sentence to insert the professor who gave Steve the award as the subject: "*The law professor awarded Steve the CALI Excellence Award in Administrative Law.*" Now, this sentence is in active voice.

Sounds easy, right? Even though many people understand how to take a sentence from passive voice to active voice once the problem is identified, few understand how to determine whether a sentence is passive in the first place. Here is the key: Look for a form of "to be" followed by a past participle. (*The Gregg Reference Manual*, 10th Edition (William A. Sabin, 2005)). A past participle is a verb form that typically, but not always, ends in "-ed" or "-en." Below is a chart that should make identifying passive voice a breeze. Although it is not foolproof, it works about 90 percent of the time.

|       |   |     |
|-------|---|-----|
| Am    |   | -ed |
| Is    |   |     |
| Are   |   |     |
| Was   | + | or  |
| Were  |   |     |
| Be    |   |     |
| Being |   |     |
| Been  |   | -en |

**2. Do not begin a sentence with "it" or "there."** Although it is not technically a grammatical mistake, try to avoid starting a sentence with "it" or "there" that is then followed by any form of the verb "be." For example, do not begin a sentence with any of the following phrases: *there is, there are, there will be, there have been, it is, it was, it will be.* The following sentence illustrates the point: "*There are three pieces of evidence that support my client's case.*" The word *there* in the sentence is referred to as a "dummy subject" or not the true subject of the sentence. Instead of beginning sentences with the word "there," locate the true subject of a sentence and begin with those words: "*Three pieces of evidence support my client's case.*" This reconstructed sentence is much stronger and more appealing to a reader.

**3. Semicolons can be confusing.** The semicolon may be the most misunderstood punctuation mark in the English language. Writers often use this mark where a period, colon, or comma belongs. The most frequent uses of the semicolon in legal writing include: (1) to establish a close connection between two sentences or independent clauses; and (2) to separate items when some of the items in listed subsets require commas. If you are using a semicolon to establish a connection between two sentences or independent clauses, you should ensure that each phrase on either side of the semicolon can stand alone as a complete sentence on its own. An example of incorrect usage of a semicolon occurs in this sentence: "*Although Martin ran as fast as he could, he could not catch it; the bus.*" The words following the semicolon in the example do not contain a verb and therefore cannot be considered as an independent clause. The correct sentence construction is: "*Martin ran as fast as he could; yet, he could not catch the bus.*"

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**4. Beware of pronoun/antecedent agreement.** Pronoun/antecedent disagreement is one of the most common mistakes found in my students' writing. A pronoun always must agree with its antecedent in number (singular or plural) and person (first, second, or third person). (*Gregg Reference Manual*). Most commonly, my students struggled with singular and plural pronoun usage. When the subject of a sentence is plural, the pronoun that is used to replace that subject later in the text also must be plural. When the subject of the sentence is singular, the pronoun must be in the singular form. This phenomenon is most common with the use of the word "their" rather than "his," "her," or the combination, "his/her." For example: "*The lawyer convinced the jury that the evidence overwhelmingly supported their client.*" "Lawyer" in this sentence is a singular noun; therefore, the writer should use "his" or "her" as the pronoun to replace the noun. The correct sentence structure is: "*The lawyer convinced the jury that the evidence overwhelmingly supported her client.*"

**5. Placement of punctuation after quotation marks.** Treatment of punctuation with quotation marks is different in American English than in British English. In American English, periods and commas always are placed inside quotation marks, even inside single quotes: Mary said to her mother, "*I never get to have any fun.*" Semicolons and colons always are placed outside of the closing quotation mark: *My boss said to me, "I will call you back at 3:00 today"; she has not called yet.* Typically, question marks and exclamation points are placed inside the closing quotation mark when the mark applies only to the quoted material: *The baseball announcer yelled into the microphone, "Play ball!"* However, if the mark applies to the entire sentence, the punctuation is placed outside of the closing quotation mark: *Did she ask, "How much will the repairs cost?"*

**6. "Because" versus "Since."** The distinction between these two prepositions has blurred in recent years, but I still believe that an acute writer should follow the traditional usage. The word "since" is a time or temporal word. For example, "*I have lived in Ohio since I was a baby.*" The preceding sentence provides a reader with information about how long I have lived in Ohio. To the contrary, the word *because* is tied to causation. For example, "*Because I have lived in Ohio for so many years, I know how to drive in the snow.*"

**7. "Its" versus "It's."** This one is truly problematic for even the most gifted writer. "It's" is a contraction for the two words "it" and "is." For example, "*I think I need to put on my coat because it's cold.*" "Its," however, is a possessive word. "*The bird must have fallen out of its nest.*"

**8. "Affect" versus "Effect."** Errors in writing often involve words that sound alike (homophones). Affect and effect are two very good examples of words that often are incorrectly interchanged. Affect (as a verb) commonly means to influence, to change, or to assume. (*Gregg Reference Manual*). "*The president's new bill will not affect the current status of the market.*" Effect is frequently used as a noun and means the result of something. (*Gregg Reference Manual*). "*The country will not know for several years whether the president's new bill created an effect on the market.*" However, effect can be used as a verb that means to cause something to come into being: "*The policy will effect change in local government practices.*"

**9. Common spelling errors, and "there," "their," or "they're."** Nearly every writer sometimes misspells the following common English words. First, "cannot" is one word. Second, "a lot" is two words. Third, "judgment" does not have an "e" between the *d* and the *g*. Finally, people often confuse the words "there," "their," and "they're." Possessive "their" means "belonging to them." "They're" is a contraction of "they are." "There" is then used for every other use of the word.

**10. Proofread your work.** Last, but certainly not least, proofread your work. Grammar, punctuation, and usage errors not only confuse readers but reflect poorly on you. Review a paper for the final time by reading it aloud backwards sentence by sentence. When a person reviews a piece of writing many times, the person's brain tends to fill in the "gaps" and supplements missing words or rearranging misplaced parts of a sentence. Reading a document backwards and aloud enables a writer to review a piece in a fresh, new way and out of the normal context and flow of the work. A sentence that may have made sense in the framework of the rest of the paragraph may not make sense at all standing on its own.

I hope that these writing tips and techniques will aid in your growth to becoming a better and more persuasive writer.

#### **NEXTSTEPS**

[Garner on Language and Writing](#). 2009. PC # 1610057. ABA Publishing.

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