Today We Will Look At…

1. What Kind of Writer are You (a self-diagnosis)
2. Active v. Passive Voice
3. Concrete Subjects
4. Action Verbs
5. Subject/Verb Distance
6. Parallelism
7. Transitions
8. Purple Prose
People think that I can teach them style. What stuff it all is. Have something to say and say it as clearly as you can. That is the only secret of style. —Matthew Arnold

[A] cardinal principle of good writing [is] that no one should ever have to read a sentence twice because of the way it is put together. --Wilson Follett

What Kind of Writer are You?
1. Less is more: I keep my writing as lean as I can, omitting unnecessary words wherever possible. Also, this way I can fit in more information.

2. More is better: I write everything that comes into my head, since I want to be sure not to leave anything out. Also, this way I can be sure to reach the minimum page requirement.

3. I use legalese as often as I can; that way my papers read like true legal documents and I sound more professional.

4. To be persuasive, anything goes.

5. A large vocabulary is good: I use obscure words any time I can because it makes my paper sound more intelligent.

6. When writing I consciously pay attention to “style.”

7. If my writing were fashion, it would be (circle one or more, as applicable):
   a. A pair of jeans and a t-shirt
   b. A gown
   c. A tuxedo
   d. A bikini
   e. A business suit
   f. Shorts, a t-shirt, and sandals
g. A suit of armor
h. Work out clothes
i. A pair of overalls
j. A military uniform
k. Pajamas
l. Other
The passive voice is constructed by combining the following two elements:
1) some form of the verb “to be”
2) plus the past participle of a

Avoid Passive Voice.

Challenge: On another paper, write two sentences: one active voice, and one passive voice.

Pros & Cons
1. Active voice is almost always better, so use it as your default
   a. It is more concise: The marshal left the summons.
   b. It uses a more vigorous verb: The defendant destroyed the premises.
   c. Reader processes information more readily: The defendant’s attorney must offer the deposition into evidence.
2. Effective use of Passive Voice: Sometimes the passive voice is preferable when
   a. the person or thing performing the action is unknown or relatively unimportant: The safe’s hinges must be examined before determining liability.
   b. it is undesirable to disclose who or what performed the action: Plaintiff’s purse was stolen.
   c. The writer wants to emphasize the deed, rather than the doer: A portion of the tape was erased.

Identify the following examples as active or passive voice then change them. Is that an improvement?

1. The decision was analyzed by the law students.

2. His offer was rejected by my attorney.

3. A large group of spectators jeered at the defendant as she left the courtroom.

4. The defendant was found not-guilty.

5. Our client was seriously injured in the accident.

6. The defendant embezzled over $1 million.
II. Use subjects

• **Avoid** abstractions such as “nature of,” “kind of,” “type of,” “aspect of,” or “area of.”
  ○ The nature of the defendant’s argument was…
  ○ vs. The defendant argued…
  ○ Various kinds of solutions were examined…
  ○ vs. The court examined various solutions…

• **Avoid** “it is important to note that,” “it is likely/unlikely that,” “it is obvious/clear/evident that,” “It is essential that…”

• **Avoid** “it” as a subject in general.
  ○ It is unlikely that the defendant will plead guilty
  ○ vs. The defendant will probably plead not guilty.

III. Use verbs.

• **Avoid** use of **to be** as the main verb of your sentence
• **Avoid** “there,” (as in “There is” and “there are” etc.) as subject/verb combo; use only when strongly indicating the existence of something
• **Avoid** use of vague verbs such as **concerns, involves, deals with, and reveals**, which tell the reader little about the real action in the sentence.

Examples:
• The owner of the land is East Coast Properties, Inc.
  ○ vs. East Coast Properties, Inc. **owns** the land.
• There are four elements to be proved in order to qualify to receive damages.
  ○ vs. The plaintiff must **prove** four elements to receive damages.
• A close reading of the contract reveals its discriminatory and one-sided nature concerning the client.
  ○ vs. The contract discriminates against and fails to protect the client’s rights.

**Exercise:** Edit the following sentences for stronger subjects and verb use

1. It is probable that the court will be in agreement with the defendant’s claim.

2. The aspects of the case which we are to consider are who the parties are who signed the agreement, whether or not they signed under duress, and whether they were competent to sign the agreement.

3. The kind of problem we discussed was one of jurisdiction.
4. The board members had an informal meeting at an undisclosed location.

5. It is interesting to note that the circumstances in Stein are almost identical to the present case.

6. The cowboy made the horse gallop as he escaped.

**SUBJECT**

**DISTANCE**

Keep subject and verb close together.

Avoid top-heavy sentences.

Example: The employee, after consuming several alcoholic drinks at a holiday party given by her employer, Ross Company, at the Woodlawn Club in Buffalo, on December 23, became visibly intoxicated and attempted to drive home.

Revision: On December 23, the employee consumed several alcoholic drinks at a holiday party given by her employer, Ross Company, at the Woodlawn Club in Buffalo. She became visibly intoxicated and attempted to drive home.

**Exercises:** Revise the following sentences, First, IDENTIFY THE SUBJECT AND MAIN VERB, Then put them closer together and avoiding top heaviness. Do odd or even sentences only.

1. He stated that the Home Real Estate brochure, a copy of which was originally attached to the response by plaintiffs to Request for Production of Documents by Defendant Ann Reese and is attached as Exhibit B hereto, specified that the Subject Parcel was served by a well and septic system.

2. Judge Alexander, after first considering comment “j” of the Restatement of Torts § 402A, which requires a warning only when the manufacturer knows or should know that there is a special danger, stated that the rule of strict liability protects the injured party from the defective product.

3. In Faries v. Atlas Truck Body Mfg. Co., 797 F. 2d 619, (8th Cir. 1986), the court held a police officer’s accident report, which contained the statement that “apparently [plaintiff] was driving at an excessive rate of speed, lost control on a curve, crossed over the center line, overturned and slid under [the milk truck],” inadmissible because it was based on hearsay.

4. The United States court, because Alco’s operations and most of its assets are located in Canada, likely will defer to the Canadian proceedings.
Parallelism is the use of similar grammatical structures in a pair or series of related words, phrases, or clauses. In other words, any time you write a list or series, keep the elements of the sentence as close to each other in structure as possible. This device improves the writer’s style and makes the writing flow. The possibilities are limitless.

Examples:
• “...government of the people, by the people, for the people...”
• “Give me your tired, your poor, your huddled masses yearning to breathe free.”
• The First Amendment is as simple in its language as it is majestic in its purpose.
• Defendant was hostile, abusive, and violent.

Exercises: Revise for parallelism

1. The questions are whether the defendant was armed, had a motive, and can be identified.

2. This attorney should be disbarred because of his neglect of a matter entrusted to him, for pleading guilty to the felony of suborning perjury, and because he disclosed a client’s confidences without the client’s consent.

3. The plaintiff admits he was driving without his license, did not have his lights on, and there was an open six-pack of beer in the front seat.

4. The defendant company did not schedule routine maintenance for the press, failed to have a technician check the press when operators complained of its malfunction, and the plaintiff wasn’t warned about those malfunctions.
Writing Tips:
1. Vary sentence length. Use the flow of longer sentences balanced by the power and emphasis of shorter ones to energize your writing.
2. When you are stuck, look up from the paper and stay: “All I’m trying to say is…” and then say it. Then write it.
Transitions

Generic Transitions

Writers need transitions in every kind of writing to signal the shifts or changes inherent in human thought.

Examples:
- I wanted to be a lawyer, SO I went to law school.
- MORE IMPORTANTLY, I wanted to live by the beach, SO I went to Florida Coastal.
- AS A RESULT, I am now a lawyer with a great tan!

These are easy, let’s go on…

Orienting Transitions

These provide a context for the information that follows. They serve to locate – physically, logically, or chronologically – the ideas or points in the rest of the sentence.
(Common uses: Those that reference to time, date, cases, and those that create context)

Examples:
- At 2:00 a.m. on January 1, 2006, police arrested me and charged me with reckless driving and driving while intoxicated.
- In Smith, the court found that the drunk driver’s insurance company was liable for the damage caused by the insured.
- From my insurance company’s perspective, continuing to provide me with insurance would be ill advised and risky.

Intrinsic or Substantive Transitions

These are imbedded in the text and serve two functions: they make a connection and they provide content. They are stylistic devices such as
- the repetition of key words,
- parallel structure, and
- dovetailing, i.e. using words with the same base that glue ideas together without a specific word transition.

Examples:

- In *Jones*, four people agreed to share costs and build a road. After building the road, each person used the road under a claim of right. (Orienting, Repetition of key words/Dovetailing)

- Defendant claims that on the day of the murder he was at home washing his car, mowing his lawn, and bathing his dog. (Parallelism)

- In the present case, for example, a particular legislator need not have voted for the Act either because he wanted to foster religion or because he wanted to improve education. –Justice Scalia (Parallelism)

- Courts in both Arizona and Utah did not uphold convictions when the vehicle’s motor was off. These cases are significant because in both instances the engine was off and the vehicle was completely off the highway. (Dovetailing)

- Also, use intrinsic devices for headings:
  
  **I. POLICE VIOLATED DEFENDANT’S FOURTH AMENDMENT RIGHTS FIRST WHEN THEY ENTERED HER HOME WITHOUT A WARRANT.**
  
  **II. POLICE VIOLATED DEFENDANT’S FOURTH AMENDMENT RIGHTS AGAIN WHEN THEY SEIZED EVIDENCE THAT WAS NOT IN PLAIN VIEW.** (Repetition of key words/Parallelism)

Summary on dovetailing:

1. **Move the connecting idea to the end of the first sentence and to the beginning of the second sentence.** Example: *The policy underlying the family car doctrine favors the Morrow’s position. This doctrine was adopted to compensate victims who had been injured by the negligent driving of minors.*

2. **Repeat key words from the first sentence in the second sentence.**
   Example: *Recently, a law student was arrested and convicted for drinking and driving. Drunk-driving convictions can prevent law students from Bar admission.*

3. **State the connecting idea in a specific form in the first sentence and then restate it as a summarizing noun or phrase in the second sentence.**
   Example: *The Fourth Amendment to the U.S. Constitution and Article I, section (a) of the Washington Constitution govern searches and seizures. Both of these provisions . . .*

4. **Use hook words such as “this,” “that,” “these,” “those,” and “such” before a repeated key word or summarizing noun or phrase.** Example: *Realizing that she would not be able to stop in time to avoid hitting the bus, Mrs. Long swerved her vehicle around the bus and into the parallel lane of traffic.*
This evasive action resulted in her sideswiping another vehicle in the oncoming lane.
**Exercises**: Re-write the following using appropriate transitions.

1. An official of the Justice Department asked Jamie to inform him of any activities of Congressman Boris that might be politically embarrassing. The Justice Department offered her a reward.

2. Washington courts have held that the state can be liable for actions that are operational. Discretionary, planning, and design actions are not included.

3. Ms. Jamie took financial log books from Mr. Boris’ private desk, copied them, and delivered them to the IRS. The IRS examined Mr. Boris’ tax returns, and he was subsequently tried and convicted on two counts of filing false tax returns.

4. In 1983, the Montana legislature adopted new and stricter laws to deal with drunk drivers. The jurisdiction of law enforcement was extended and faster and stiffer penalties were provided.
SOME NOTES ON STYLE

Dare you strive to be eloquent? How could you not! But be careful: purple prose is not eloquent, it

1. makes excessive use of adjectives and adverbs
2. uses cliché ridden phrases and images
3. uses mixed metaphors
4. overdevelops metaphors
5. uses pretentious vocabulary
6. is wordy

The paragraphs below demonstrate examples of the above “sins of purple prose.”

“It is my understanding that our client, Mr. Silvino Gomez, is a twenty-two-year-old of Mexican American descent. Because of Mr. Gomez’s prowess as a basketball player, he was brought to the delighted attention of enthusiastic recruiters from several private colleges. He ultimately accepted an athletic scholarship from the University of Newton, where he matriculated and began playing his chosen sport in September 2003. His maiden voyage into the waters of college life was off to a promising start: Barely out of the starting gate, he showed himself to be as talented in the classroom as on the court, and his grades reflected his academic acumen. It is to be noted that his interests that fall also included the very beautiful Elizabeth Jaynes, former steady of the team’s star guard, Michael Wilson.

Silvino’s freshman year was not to be without troubles, however. Storm clouds gathered on the horizon and we couldn’t see the forest for the trees as the season got underway, Gomez, playing well, as was expected of someone of his endowments and experience, sensed that Wilson considered him a threat, and tension between the two stirred the air as Wilson harassed Gomez on the court. Although there was no “name-calling” during October, the dust flew in November when Wilson thundered at Gomez, “You f****** spic!” At first, the insults were made only when the coaches were absent, but in late November a really dumb Wilson hurled them like lightning bolts during several practices in the presence of the coaches. In December, even the fans at several games were listening as Wilson’s insults fell like hailstones on Gomez.”

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In the same vein, avoid going “over the top” when using persuasive language.

A FINAL CHECKLIST WITH A FEW EXTRA COMMENTS

- In trying to be persuasive, have I gone too far?
- Is my prose just right, or is it too lean, too fat, too fancy?
- Do I use active voice, only using passive voice for specific circumstances?
- Do I use concrete subjects and action (strong & precise) verbs?
- Do I use parallelism to create clarity, flow, eloquence?
- Do I use dovetailing to improve style?
- Have I avoided the use of purple prose?
- Do I avoid double or multiple negatives (e.g. It was not unlikely that the Court would not give Defendant a retrial.)
- Do I take special care with word choice: and when in doubt, look it up?
- Do I avoid wordiness by omitting needless words?
- Do I proof-read, proof-read, proof-read?
- After revising a passage, do I proof it again to make sure I left no loose ends or confusion?