

University of Ottawa Faculty of Law (Civil Law Section)

From the Selected Works of Hon. Gerald Lebovits

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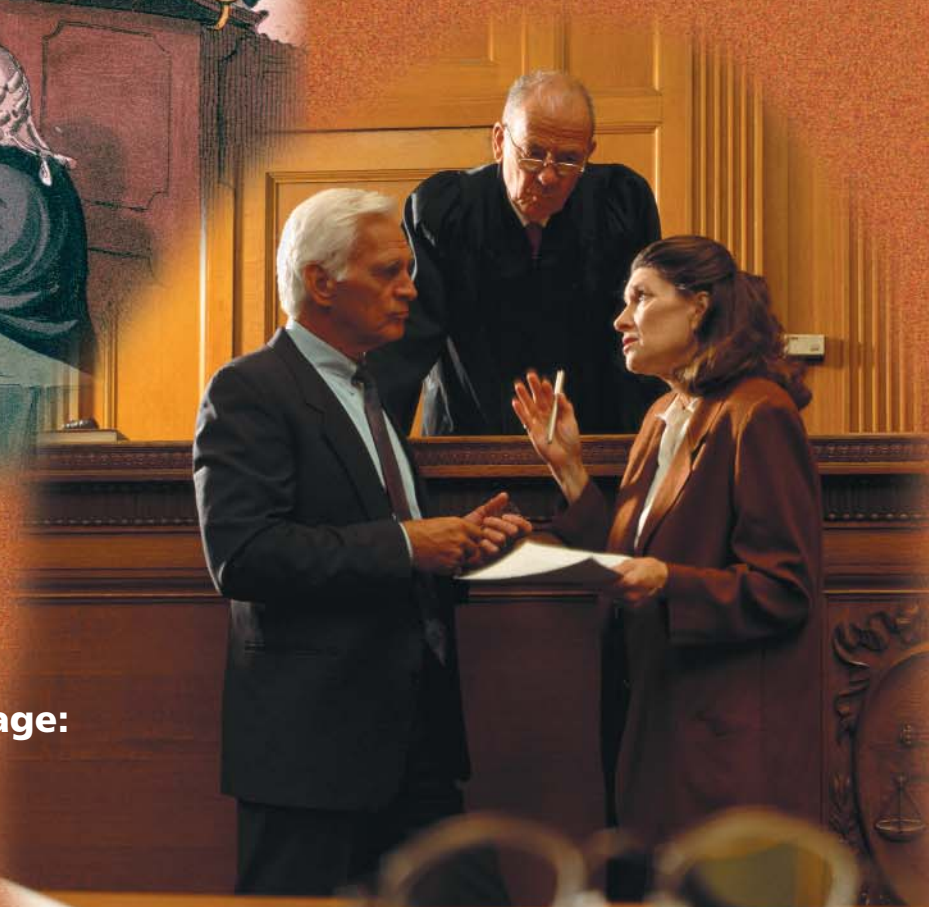
Dress for Success: Be Formal But Not Inflated

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*Editor's Note: Gerald Lebovits is the author of *Advanced Judicial Opinion Writing*, a handbook for New York State's trial and appellate law clerks and court attorneys. The Journal has asked him to adapt, in the coming months, portions of his 328-page work to the needs of practicing attorneys, applying his principles to briefs, position papers and client memorandums.*

His first column addresses an issue of tone applicable to all legal writing. Future columns will explore the philosophy of style, usage, persuasive legal writing, legal-writing myths, citation and other issues.

BY GERALD LEBOVITS

Lawyers must dress for court. No ripped jeans, but no top hat, tails, and spats, either. A well-dressed lawyer is formal but not inflated. Clothes do not make the lawyer. But they get the lawyer into court.

Just as lawyers must dress appropriately, lawyers must write appropriately. Lawyers who write must do more than shape law, apply fact, and organize coherently. They must do more than master grammar and usage. They must also adopt an effective style and tone. Whatever the legal writer's goal—to persuade, to inform—the right tone is formality without inflation.

Some rules will help lawyers get out of Elizabethan courts and into American courts of the twenty-first century.

No contractions or ampersands. They aren't formal & shouldn't be used. But use ampersands in names of businesses and professional associations that use ampersands. The law firm: "Dewey, Cheatem & Howe."

No slang. You betcha bottom dollar! In legal writing, "[s]lang often deformatizes, thereby deemphasizing the seriousness of a situation."¹ Fad words are groovy—not! And trendy writing is flaky.

No recent back-formations. They enthuse no one. It is hard to orientate people to new back-formations. A back-formation is formed by subtracting an affix from a longer word. Older back-formations such as *diagnose* from *diagnosis* are acceptable. Readers find new back-formations grating. A friendlier relative of the back-formation is the functional shift. Through shifts in parts of speech, a verb may become a noun (*to run* may shift to *a run*) and a noun may become a verb (*a blacklist* may become *to blacklist*).

The "ize" sometimes have it. No one objects to old -ize suffixes that turn nouns or adjectives into verbs: *criticize*, *rationalize*. All disfavor recent -ize formations: *concretize*, *prioritize*.

No implied intransitives. In an implied intransitive, the object is indeterminate. What do waiters mean when they serve food and tell you to "enjoy"? To enjoy the food? To enjoy yourself while you digest? Implied intransitives are acceptable in conversation but not in formal writing.

No de-transitivizing. A verb may be transitive ("I need you") or intransitive ("I need"). A de-transitivized verb is neither. Safire's examples of what not to write: "[P]lease wait while your credit card is *authorizing*" and "[T]his book usually *ships* in three days."² The problem with de-transitivized verbs is lack of clarity, not merely informality. What subjects of Safire's sentences are authorizing and shipping? What objects are the verbs' action being done to?

Do not "verb" nonverbs. Parts of speech evolve into verbs called "changelings," which in time function as nouns and verbs: *calendar*, *chair*. But do not overnight nonverbs overnight.

No colloquialisms. Go 'round the barn to avoid 'em.

No abbrev. in your text unless nec. OK? Eliminate the following: *i.e.* (*id est—in other words, that is*); *e.g.* (*exempli gratia—for example*); *re:* (*about, concerning, in the matter of, regarding—except as a reference in a letter*); *etc.* (*et cetera—and so forth, and so on, and the like*); *N.B.* (*nota*



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bene—note well); *q.v.* (*quod vide*—which see; see also has replaced *q.v.*); *viz.* (*videlicet*—namely).

N.B.: Use commonly abbreviated titles such as Mr., Ms., and Dr. Do not abbreviate less common titles. Prefer *Officer A* to *P.O. A*, *Professor X* to *Prof. Y*. *Q.V.:* Acronyms you have already defined are permitted: FBI.

No parenthetical remarks. (They are informal and (usually) easily avoided.)

No strong interjections. “Good grief!” Interjections express emotion too strong for legal writing.

No shortened words. Whether you write on a p.c. in your auto or dictate over your phone on a plane, go the max: Write words in full. “ET, phone home” becomes “ET, telephone home.”

Quibble over quotation marks. Avoid quotation marks except to quote, define a term of art, or reference a word or phrase. Not following this rule marks you a “paranoid” or an “egocentric.”

Forget figures. Prefer words to figures when giving lists, for 1 reason: Words are more formal than figures.

No pontificating or high-falutin language. Write like a person, not a personage. Those who use inflated language are, well, full of hot air.

Big words are bad. Never use a gargantuan, humongous, or capacious (*big*) word when an infinitesimal, lilliputian, or diminutive (*small*) one will suffice, be adequate, and satisfy your requirements (*do*). Big words impress no one. Perhaps your sixth-grade teacher taught you to use \$10 words. Perhaps you learned big words for the SAT. Perhaps big words brought you high grades in college. Perhaps you paid big money for a big thesaurus to learn big words. If so, your writing can use a big adjustment.

Here is an authoritative guide from Professor Rozakis’s fun book: “[A]cademic writing is all-too-often verbose and didactic for the sake of mere pedantry. After you graduate and enter the business world, your task shifts from writing to impress to writing to communicate . . . Much of the time . . . big words just set up barriers between you and your audience.”³

Besides, big words can mean big mistakes. Incorrectly using a big word turns pretense into buffoonery—a perception a legal writer can ill afford to create. Recall the times you have heard people confuse *subsequently* with *consequently*. These people should have preferred *later* to *subsequently*.

Strive for balance in formality. Be neither impenetrable nor casual. (That would be a tummy-wrenching experience.) Be neither inhibited nor egocentrically breezy. (Which reminds me of an interesting story . . .). Be neither gratuitously judgmental nor opinionated. (Nobody asked me, but . . .). The goal in legal writing is

not to be conversational, as one would be in an informal, relaxed setting. The goal, however, is to use words you would use in polite conversation.

Good legal writing is planned, formal, noninflated speech. If you want to write the Queen’s English, make sure the Queen is not Elizabeth I. Clothes do not make the lawyer. But writing well does.

1. George D. Gopen, *Writing from a Legal Perspective* 56 (1981).
2. William Safire, *On Language*, N.Y. Times Magazine, Oct. 22, 2000, at 38 (emphasis in original).
3. Laurie E. Rozakis, *The Complete Idiot’s Guide to Grammar and Style* 233 (1997).