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**From the Selected Works of Hon. Gerald Lebovits**

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## Do's, Don'ts & Maybes: Legal Writing Do's—Part II

Gerald Lebovits



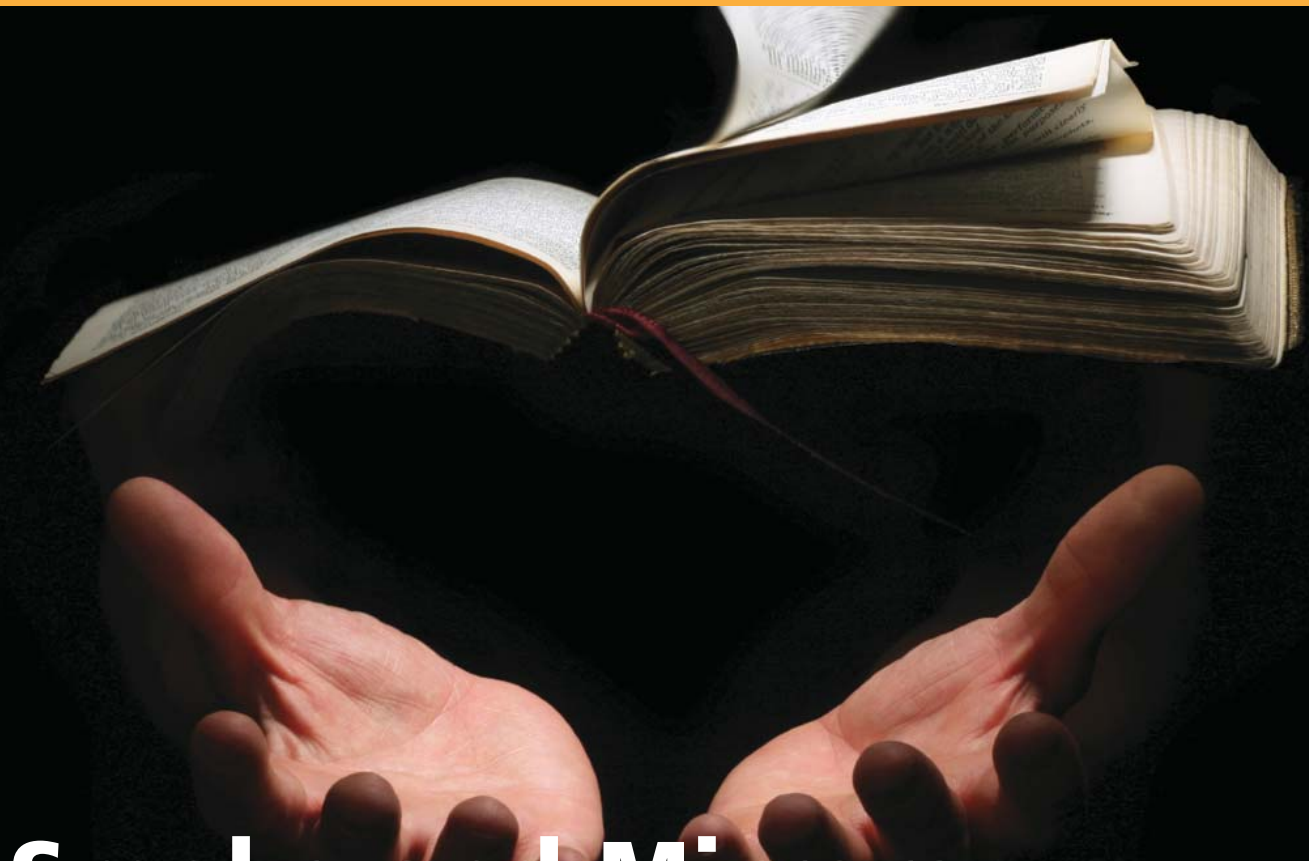
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# Journal



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## Do's, Don'ts, and Maybes: Legal Writing Do's — Part II

In the last column, the Legal Writer discussed 13 things you should do in legal writing. We continue with our list of the next 13 do's. Together the columns are a double baker's dozen of legal writing's do's — the things writers should love.

**14. Love Small-Scale Organization: Paragraphs.** Paragraphs are the building blocks of writing. Start each paragraph with a topic or transition sentence. A topic sentence introduces what you're going to discuss in your paragraph. Every sentence in each paragraph must relate to and amplify your topic sentence. One way to have a topic sentence is to take the last sentence of a paragraph and put it onto the next. A transition sentence links the end of one paragraph to the start of the next paragraph by linking or repeating a word or concept. Use transitional devices to divide paragraphs and to connect one paragraph to the next when a paragraph becomes lengthy. The best transitional devices join paragraphs seamlessly. End your paragraph with a thesis sentence that summarizes and answers your topic sentence. Don't restate your topic sentence. Every sentence in the paragraph should lead to the conclusion set out in the thesis sentence. Each sentence must relate to the next, to the one before it, to the topic sentence, and to the thesis sentence. *Topic sentence:* "Defendant lied about his relationship with ABC." *Thesis sentence:* "The court should reject defendant's testimony as incredible." *Transition sentence:* "Defendant also lied about his relationship with XYZ."

**15. Love Appropriate Paragraph and Sentence Length.** A sentence

with more than 25 words is hard to digest. Each sentence should contain one thought and about 15–18 words. A paragraph should rarely be longer than six sentences. It shouldn't exceed one thought and two-thirds of a double-spaced page or 250 words, whichever is less. Varying sentence and paragraph length makes your writing spicy and more readable. When in doubt, shorter is better. Reserve one-sentence paragraphs for those sentences that must have great emphasis. If you use too many one-sentence paragraphs, the emphatic effect will be lost. Also, too many short sentences or paragraphs in rapid order is angry-sounding, choppy, and distracting.

To see your "average words per sentence" on WordPerfect, go to "File," then "Properties," and then "Word Count." On Microsoft Word, you have two ways to see your "words" and "paragraphs." Go to "Tools," then "Word Count," or go to "File," then "Properties," and then "Statistics."

**16. Love Small-Scale Organization: Sentences.** Start sentences with familiar, less important information. End sentences with new, more important information. The best writing repeats in the beginning of the second sentence concepts, names, phrases, and words taken from the end of the first sentence. Transition from sentence to sentence by going from old to new, from simple to complex, from short to long, or from general to specific. The strongest emphasis is at the end of a sentence. The second strongest is at the beginning of a sentence. The least emphasis is in the middle of a sentence. *Example:* "Bill drinks, but he's a good worker."

*Versus:* "Bill's a good worker, but he drinks." Start and end with power. Bury less important information in the middle. The best writing doesn't rely excessively on conjunctive adverbs like "additionally," "along the same lines," "furthermore," "however," "in addition," "in conclusion," "moreover," "lastly," and "therefore." If the logic and movement of your ideas are clear, your reader connects thoughts without needing artificial transitional devices that impose superficial logic.

**17. Love Simple Declarative Sentences.** Don't write convoluted sentences. Each sentence should contain a subject, a verb, and an object. Put the subject at the beginning of most sentences. *Examples:* "The court . . ." "Defendant . . ." "The witness . . ." Use a short subject. Put the verb immediately after the subject. Don't put words between the subject and the verb: keep your subjects next to their verbs. *Examples:* "The court held . . ." "Defendant fled . . ." "The witness explained . . ." Misplacing your subject, not keeping your subject next to your verb or object, or placing qualifying or descriptive information before the main subject and its verb ("front-loading") are common errors that lead to lack of clarity.

Don't begin every sentence with a subject. From time to time substitute subjects with subordinate clauses, also called dependent clauses, to assure flow and to rank ideas by importance. Then place the main idea in the main clause, after the dependent clause. A subordinate clause begins with a subordinate conjunction ("after," "although," "as,"

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"because," "before," "if," "though," "until," "when," "where," or "while") or a relative pronoun ("that," "which," "who," "whoever," or "whom") and will contain a subject and a verb. For variety, begin sentences occasionally with "after," "although," "as," "as if," "as long as," "because," "before," "if," "though," "until," "when," "where," or "while."

Not every sentence should be simple. A few should be compound, complex, or compound-complex. Compound sentences contain two independent clauses: the clauses are linked with a semicolon, or they are linked with a coordinating conjunction. *Example:* "New York City is fun and exciting, but it doesn't compare to Montréal." Complex sentences contain a main, independent clause and at least one dependent clause linked by a subordinating conjunction. *Examples:* "Although Montréal is a fun town, I don't visit often enough." Compound-complex sentences contain at least two independent clauses, and at least one dependent clause, all somehow linked. *Example:* "New York City is fun and exciting, and so is Montréal, but New York City doesn't compare to Montréal, although I don't visit Montréal often enough."

**18. Love the Active Voice.** Prefer the active voice to the passive. The passive voice comes in two forms: single passives and blank passives. Blank passives are sometimes called double or nonagentive passives. A single passive occurs when a sentence is converted to object, verb, subject from subject, verb, object. The blank passive hides the subject. The active voice lets readers know who did what to whom, in that order. The active voice is concise; the passive, wordy. The active voice is always honest; the passive is sometimes dishonest. People think in the active voice, not the passive. Active voice: "The lawyer wrote the brief." This sentence goes from subject, to verb, to object. Single passive: "The brief was written by the

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lawyer." If you see a "by," you'll see a single passive.

Use single passives only to dovetail or to end a sentence with climax. To dovetail is to connect sentences. To climax is to end a sentence with emphasis. One dovetailing technique is to move from old to new. *Active example:* "Mr. Smith wrote the brief. Mr. Smith is a strong writer." *Dovetail examples:* The brief was written by Mr. Smith, who is a strong writer." Or: "The brief was written by Mr. Smith. Mr. Smith is a strong writer." *Climax example:* "The ground was shaken by an earthquake." The word "earthquake" brings about the climax; the words "the ground" aren't that important. The active version is less interesting than the passive version: "An earthquake shook the ground."

Sometimes blank passives hide what's important but harmful. Using blank passives to conceal information is unethical. *Example:* "Mistakes were made." In this sentence, you don't know who made the mistakes. *Becomes:* "Attorney Abe made mistakes." *Example:* "The suspect was read her *Miranda* rights." The problem with this sentence is that you don't know who read the suspect her rights. Write it in the active voice instead: "Officer Jones read the suspect her *Miranda* rights." *Exceptions:* Use blank passives if you don't know who the subject (actor) is or to de-emphasize an irrelevant or obvious subject (actor).

**19. Love Gender-Neutral Language.** Gender neutrality isn't about political correctness. It's about thinking and writing in a nondiscriminatory way. Sexist language is bad because it's offensive and degrading. It's discrimination in print. Sexist language is also bad because it focuses readers on style.

Gender-neutral language focuses readers on content. A writer's goal is to emphasize content, not style.

The first way to make language gender neutral is to make the antecedent plural: "A law clerk can't be careless. She must be meticulous and precise." Change "a law clerk" to "law clerks" and "she" to "they" to eliminate the sexist language. *Becomes:* "Law clerks can't be careless. They must be meticulous and precise." The second way is to rephrase the sentence to eliminate the pronoun: "She who can't handle the work should find another job." *Becomes:* "Anyone who can't handle the work should find another job." "A waiter likes his customers to be generous." *Becomes:* "A waiter likes generous customers." The third way is to repeat the noun. "A police officer will be here soon. He'll help you." *Becomes:* "A police officer will be here soon. The officer will help you." The fourth way is to use the second-person pronoun: "you," "your," or "yours." "He who can write should apply for the job." *Becomes:* "If you can write, apply for the job."

Eliminate all sexist language. Use gender-neutral parallel language: Write "husband and wife," not "man and wife" or "man and woman." Delete the suffix "-man." Use "Assembly Member" not "Assemblyman"; "Chair" not "Chairman" or "Chairperson"; and "Police officer" not "Policeman." Avoid the suffixes "-ess" and "-trix." Use "executor," not "executrix"; "prosecutor," not "prosecutrix." Eliminate masculine terms: "humanity," not "mankind"; "made by hand," not "man-made"; "average person," not "common man." Don't use clumsy variants like "s/he/it," "s/he," "(s)he," "he or she," or "him or her," or alternate

between “he” and “she.” Never write ungrammatically to solve a gender issue. *Incorrect:* “A gourmet likes their coffee black.” *Correct:* “Gourmets like black coffee.”

**20. Love Good Quoting.** To quote or not to quote — that’s the question. Quoting shows readers you’re reliable: The reader needn’t consult the source to confirm your argument.

only in a newspaper headline. Use double quotation marks to set off or define a word or phrase and to repeat speech.

All quoting must be accurate. Always proofread your quotation from the original source to assure perfect quoting, letter for letter, comma for comma. Show if you’ve altered, added, or deleted language. Use brackets “[ ]”

The appellate court held that the lower court “should have denied the summary-judgment motion.”

People don’t like to read quotations. Tempt them. Introduce the quotation with a lead-in, weave the quotation into the sentence, or use an upshot to paraphrase the meaning of the quotation. *Lead-in:* “As the prosecutor explained, ‘The defendant bought a gun.’” *Weave:* “The prosecutor explained that defendant ‘bought a gun’ before he committed the crime.” *Upshot:* “The prosecutor explained that the defendant purchased the murder weapon before he committed the crime: ‘The defendant bought a gun.’”

**21. Love and Follow Rules.** Readers think that if you’ll cheat on rules, you’ll lie about the record or not cite controlling authority. Your credibility — essential to legal writing — will vanish. If you’re submitting a document to a court, follow the court’s rules about page length, table of contents, font, paper color, and number of copies you must submit. It’s easy to comply with these rules; many courts publish their rules on their Web sites. Make sure in particular to follow the rules of the judge who’s presiding over your case. Your office might have its own rules on style and format. Follow them, too.

**22. Love Good Format.** Write for the ear, not the eye. But create easy-to-read documents. Presentation always counts. Readers need plenty of white space on a page. Your margins should measure at least one inch, up to 1.25 inches, on the bottom, sides, and top. Indent your paragraphs one tab from the margin. The Legal Writer prefers single spacing, although many court rules require double spacing between paragraphs. The Legal Writer prefers two spaces between sentences, not just one space. If you’re writing an article for publication, for example, editors will convert to one space between sentences. The Legal Writer also prefers right-ragged margins to fully justified ones. Don’t create a kaleidoscope of colored or highlighted text. Choose one font and stick to it. The Legal Writer recommends Times New Roman or any

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controlling authority.

Quoting is good if done reasonably. Quote essential things you can’t say better than the original. Quote authoritative sources. If a case, contract, or statute is in dispute, quote it. Quote to eliminate any suggestion of plagiarism. Then quote only what’s helpful or necessary. Quoting excessively makes your document look choppy and you look lazy. Excessive quoting doesn’t substitute for analysis. Paraphrase and explain instead, and cite the source.

Don’t use block quotations (also called blocked or set-off quotations) unless you’re quoting important parts of a statute, contract, or critical text from a case. The Legal Writer recommends that quotations of 50 words or more be double-indented. Others suggest blocking quotations of three lines or more. Single-space block quotations, but double space between block paragraphs. Never end a paragraph with a block quotation. The Tanbook — New York’s Official Style Manual — recommends that you use double quotation marks (“ ”) around the entire block quotation. The Bluebook advises not to surround the block quotation with quotation marks. The Legal Writer recommends using double quotation marks around the block quotation. They make it easier to see quotations, especially in documents published online.

Use single quotation marks (‘ ’) around a quotation within a quotation. Otherwise use single quotation marks

to show alterations or additions to a letter or letters in a word. *Alterations:* “Substantially” becomes “Substantial[.]” “Substantial” becomes “Substantial[ly].” “Substantially” becomes “[s]ubstantially.” “Substantlly” becomes “substant[ia]lly.” *Additions:* “The judge did [not] like to make jokes [sic] in court.” When quoted material contains a spelling, usage, or factual error, use “[sic],” meaning “thus,” after the error to show that the error is in the original. If the context makes it clear that the error was in the original, don’t add “[sic].” If you overuse “[sic],” the reader will believe you’ve used the quoted material only to highlight the error. To prevent overusing “[sic],” alter the quotation or paraphrase it.

Use ellipses to show omission. Use three-dot ellipses (“ . . .”), all separated by spaces, to show omissions of punctuation or one word or more in the middle of the sentence. Use four-dot ellipses (“ . . . .”), all separated by spaces, to show omissions at the end of a sentence if (1) the end of the quotation is omitted; (2) the part omitted isn’t a citation, a footnote, or an endnote; and (3) the remaining portion is an independent clause. Unless all three criteria are satisfied, use a period, not an ellipse. Don’t use ellipses before the portion you quote. *Example:* The appellate court held that the lower court “. . . should have denied the summary-judgment motion.” *Becomes:*



font with the word “book” in it, with 12- or 13-point font size. Italicize case names. Don’t underline and italicize at the same time. Number each page (suppress the first page) unless you’re writing an affidavit or an affirmation, then number your paragraphs. Get rid of orphans and widows. An orphan is a single word or phrase at the end of a paragraph or page. A widow is a single word or phrase appearing alone at the top of a page.

**23. Love Official Citations.** Always cite the official version when you cite a New York case to a New York court. The court system gives most judges only the official reports; official citations are more accurate than unofficial ones; and CPLR 5529(e) requires lawyers to use official citations in appellate briefs. Prefer the New York Reports and its Second or Third Series (N.Y., N.Y.2d, N.Y.3d) to West’s North Eastern Report and its Second Series (N.E. or N.E.2d) or West’s New York Supplement and its Second Series (N.Y.S. or N.Y.S.2d); the New York Appellate Division Reports and its Second or Third Series (A.D., A.D.2d, A.D.3d) to West’s New York Supplement and its Second Series (N.Y.S. or N.Y.S.2d); and the New York Miscellaneous Reports and its Second or Third Series (Misc., Misc. 2d, Misc. 3d) to West’s New York Supplement and its Second Series (N.Y.S. or N.Y.S.2d). Use West’s unofficial reports, but not instead of the official citations. In New York, it’s unnecessary to give parallel citations. If you do, always cite and use the official citation (N.Y.3d, A.D.3d, Misc. 3d), if available, in addition to the unofficial citation. Use commas to separate parallel citations.

**24. Love Good Citing.** Readers love proper citation. It doesn’t take long to look up the rule in the Bluebook, now in its eighteenth edition, or in ALWD, the Association of Legal Writing Directors Citation Manual, now in its third edition. The Bluebook has been around since 1926. Most lawyers, law journals, and Moot Court competitions use the Bluebook. Some law school legal-writing programs use ALWD as an antidote for the Bluebook blues. New York

judges use the New York Law Reports Style Manual (Tanbook),<sup>1</sup> prepared by the New York Law Reporting Bureau.<sup>2</sup> Make it easy for the court to rule for you. Use the Tanbook when you write for New York courts. The Bluebook and ALWD are brilliant documents. But their recommendations on how to cite New York authorities are always wrong; and the Tanbook is always right.

Citing well makes you credible. It tells readers to trust you and your writing. Use the correct volume, reporter, page number, and case name. Accurate citations help readers find propositions fast. Give a full citation in each new section of your document before you give a short-form citation; then always use the short-form citation in that section of your document. Use signals to introduce citations. No signal is necessary after a quotation or if the citation supports your proposition directly. Use “contra” if your citation contradicts your proposition directly. Use “see” if your citation supports your proposition indirectly or by inference. When you use “see,” explain in the text or in a parenthetical following the citation why the citation supports your proposition. Use “but see” if your citation contradicts your proposition indirectly.

Use pinpoint (jump) citations. This forces you to read the authority so that you’re certain your authority supports your proposition fully; it also helps you find other citations and arguments. Pinpointing tells readers that you’ve read the case and know the material. It also prevents readers from rummaging through an entire document to find your point. When citing cases or secondary authorities, use pinpoint citations down to the footnotes. Use the correct court and year to tell the reader whether your authority is binding or persuasive. Mention in a parenthetical after your citation whether the opinion is a memorandum, per curiam, en banc, dissent, concurrence, or plurality opinion. Mention whether leave or certiorari was granted or denied. Use parenthetical explanations to clarify authority. Use lower-cased gerunds — a verb used as a noun that ends in “-ing”

— at the beginning of the parenthetical explanation: “citing,” “comparing,” “distinguishing,” “finding,” “holding,” or “noting.” *Example:* *A v. B*, 3 N.Y. 123, 125 n.4, 55 N.Y.S.2d 231, 234 n.4, 1 N.E. 456, 457 n.4 (1981) (holding that landlord may take for personal use one or more apartments in building if landlord shows good faith at trial). Pinpoint even if your proposition is on the first page: *E v. F*, 16 Misc. 61, 61, 18 N.Y.S. 75, 75 (App. Term 2d & 11th Jud. Dists. 2d Dep’t 1961) (per curiam). The same applies if your authority has only one page.

One good citation is enough. Don’t string cite obvious or threshold matters. Limit string citing to three cases except when you must document the sources necessary to understand authority or a split in authority. Separate different authorities by semicolons. Never cite headnotes and syllabuses.

**25. Love Deadlines.** Submit court documents on time. If you need more time, ask the court in advance, not after the document is due. If your boss gave you a deadline, follow it. Adhering to deadlines shows that you’re professional and responsible. It shows that you respect and value someone else’s time. If you gave yourself a deadline, follow it, too.

**26. Love Visuals.** Paint visuals for the reader. Attach to your legal document the authority you’ve cited if the authority is unpublished. If you’re submitting a document to a trial court, attach the leading cases even if the cases are published or available on Westlaw or LEXIS. Highlight the relevant text in the attachment. Download photographs and include them in the document. Create graphs and charts if you can. Attach them in an appendix and explain them in the text.

In the next two columns, the Legal Writer will discuss legal writing’s 26 don’ts. ■

1. See [http://www.courts.state.ny.us/reporter/New\\_Styman.htm](http://www.courts.state.ny.us/reporter/New_Styman.htm) (last visited Apr. 20, 2007). A new edition of the Tanbook will be released sometime in the latter part of 2007.

2. See <http://www.courts.state.ny.us/reporter> (last visited Apr. 20, 2007).