2008

Do's, Don'ts, and Maybes: Usage Controversies—Part II

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THE LEGAL WRITER
BY GERALD LEBOVITS

Do’s, Don’ts, and Maybes:
Usage Controversies — Part II

In the last column, the Legal Writer discussed four controversies in legal writing. We continue with 10 more.

5. Placing quotation marks. Many legal writers believe that periods and commas go inside or outside quotation marks depending on the quotation. They’d be right in England. They’re wrong in America.

Use quotation marks to introduce and close quotations. Periods always go inside quotation marks. Correct: The attorney told the jury “you must find the defendant not guilty of murder in the second degree.”

Commas always go inside quotation marks. Correct: The attorney told the judge that the plaintiff had “moved for legal, or attorney, fees,” but the attorney was wrong. Exceptions: “I want to settle,” she said, “but my client doesn’t.” My boss always said, “It is what it is.”

Semicolons go outside quotation marks. Correct: The prosecutor told the jury that “the defendant bought the gun from a local pawn shop”; the prosecutor then published the gun to the jury.

Colons always go outside quotation marks. Correct: The attorney asked the following question: “Did you take any medications today?” The judge noted that “the attorney gave us a list of colors”; red, blue, green and orange.

Whether quotation marks go before or after a question mark depends on whether the question is in the original. Example of question in the original: The clerk asked me, “Sir, do you want to submit opposition papers?” Example of question not in the original: Who said, “I have nothing to offer but blood, toil, tears and sweat”?

Putting quotation marks before or after an exclamation point depends, like the question mark, on whether the exclamation point is in the original. Example of exclamation point in the original: “Counselor, you know exactly what I mean!” said the judge. Example of exclamation point not in the original: “Counselor, stop calling me “ma’am”!

6. Footnotes and endnotes. Some overuse them. Others don’t use them at all.

Avoid putting substance or deep analysis in footnotes or endnotes. Footnotes or endnotes are acceptable for collateral thoughts, special effects, excerpts of testimony, and quoting statutory or constitutional provisions. If the material is important enough to warrant a footnote or an endnote, then it’s important enough to include in the text. Being a substantive argument in a footnote or endnote is like being a middle child — you’ll be ignored. Footnotes or endnotes are an unpleasant interruption for readers: “Having to read a footnote resembles having to go downstairs to answer the door while in the midst of making love.”

For legal briefs, use footnotes, if at all, and not endnotes. Unless you’re writing a law review or journal article, don’t include citations in footnotes or endnotes. The Legal Writer does not recommend citational footnotes. Those who favor citational footnotes argue that footnoting citations makes sentences shorter; paragraphs more forceful and coherent; ideas, not numbers, more controlling; poor writing more laid bare; caselaw better discussed; and string citations less bothersome.

Opponents of citational footnotes — like the Legal Writer — argue that looking up and down at the footnotes is distracting. Readers need to find citations quickly.

Having few footnotes or endnotes will draw the reader’s attention to the footnote or endnote. If the footnote or endnote isn’t important or necessary, cut it out. Draw the reader’s attention with your text.

Having too many footnotes or endnotes will cause readers to lose focus, and your footnotes or endnotes will lose value.

Don’t try to cheat on page limit by putting the bulk of your text in footnotes or endnotes. Everyone will see right through this tactic.

7. S’ors’s. Singular possessive: Some legal writers add only an apostrophe and leave out the “s.” The Legal Writer recommends putting an apostrophe “s” after a singular possessive ending in a sibilant (Ch, S, X, or Z sound). That way you’d write it the way you’d say it out loud. Example: John Adams’s Thoughts on Government. Not: John Adams’ Thoughts on Government.

Example: John Roberts’s opinion. Not: John Roberts’ opinion. Without the apostrophe “s,” the pronunciation would be incorrect.

Plural possessives: Don’t use an apostrophe “s” after a plural possessive ending in a sibilant. Example: “The attorneys’ rules directed all internal disputes to arbitration.” Not: “The attorneys’s rules directed all internal disputes to arbitration.”

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8. **Choosing the right font.** Many writers believe that any font will do for legal documents. Typefaces, also called fonts, affect the readability of documents. Use fonts that make the text easy to read. In legal writing, that means fonts like Times New Roman, Courier New, or any font with the word “book” in it rather than the Arial font. Times New Roman and Courier New are serif fonts. Arial is a sans serif font. A serif font has small lines at the top and bottom of each letter. A sans serif font has no lines. The lines in the serif font draw the reader’s attention and let the eye move easily from letter to letter. The writer’s goal is to make it easy for the reader to move through the text. Don’t mix fonts in the same document. Keep it professional.

9. **Right-ragged effect.** Some legal writers recommend full justified text. Others recommend non-justified text. Also known as non-justified or flush-left, a right-ragged effect refers to allowing lines of text to end naturally on a page. The text is aligned, or flush, to the left. It creates a loose, or ragged, right edge. A right-ragged effect leaves varying amounts of white space (no words appear) at the end of lines. It doesn’t force the text to line up flush with the margin. Ragged right is the most common ragged alignment. The opposite — full justification, or flush-right — creates a straight right-hand edge to the text.

Leave plenty of white space on the right-hand side of the page; it’s easier on the eye.

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10. **Word and line spacing.** Word spacing: The trend is to put one space between sentences in publishing. For unpublished, typed documents, put two spaces between sentences. Line spacing: Single-spaced final copies of a document are easier than double-spaced documents for readers to see and comprehend. Single-space text. It’s easier on the eye. Readers prefer unjustified text. It’s easier to follow. Full justification causes the spacing between words to fluctuate from line to line. Full justification cramps or stretches out words. The text must be even on the left- and right-hand sides. Full justification disrupts readers: It forces readers to stop and readjust to the spacing on each line. Although full justification presents a clean and crisp document, it’s difficult to read. Right-ragged promotes reading flow.

     You’ll find the right-ragged effect in textbooks more than in novels. Because justified text is more formal than non-justified text, most newspapers use justified text.

     To create a right-ragged effect, use the left justification (or align left) feature on your computer program.

11. **Citations.** Some legal writers believe that lawyers should cite according to the Bluebook. Others rely on ALWD, the Association of Legal Writing Directors Citation Manual. Still others follow the New York Law Reports Style Manual, New York’s Official Style Manual (Tanbook). How you cite depends on your audience. Make sure you know your audience. If you’re writing to a judge, check the court’s rules for spacing requirements. If you’re writing to your boss, know your boss’s rules on spacing.

12. **The one-sentence paragraph.** Some readers believe that a one-sentence paragraph signals undeveloped ideas in an unsophisticated, juvenile style. But one-sentence paragraphs are acceptable to transition between two large paragraphs in a document. Doing so forms a bridge between two lengthy paragraphs. In a lengthy paragraph, readers must work overtime to understand the meaning of the words and the connections between them. A one-sentence paragraph eliminates some work for the reader. A one-sentence paragraph also gives readers a chance to catch their breaths between long paragraphs. But be careful. Use one-sentence paragraphs sparingly for dramatic effect: emphasize an important point.

13. **Spelling out numbers.** From a tradition that evolved during the typewriter era and primarily to avoid forgery, some legal writers spell out numbers and then identify the number in parentheses. Example: “Respondent’s apartment has six (6) bedrooms and three (3) bathrooms.” Imagine if you were to say this to someone: “His
apartment has six six bedrooms and three three bathrooms.” The point is that you wouldn’t say it: It’s redundant. If you wouldn’t say it out loud, don’t write it.

Don’t hyphenate when the first word in the adjectival phrase ends in “ly.” Incorrect: “Physically-incapacitated defendant.” Correct: “Physically incapacitated defendant.”

Some writers say you shouldn’t hyphenate two-word modifiers whose first element is a comparative or a superlative. The Legal recommends hyphenating. Examples: “Lowest-priced suit”; “upper-level apartment”; “best-dressed attorney.” Also acceptable: “Lowest priced suit”; “upper level apartment”; “best dressed attorney.”

Don’t hyphenate in a compound predicate adjective whose second element is a past or present participle. Incorrect: “His judicial opinions were wide-reaching.” Correct: “His judicial opinions were wide reaching.”


Conclusion. This ends the Legal Writer’s 11-part Do’s, Don’ts, and Maybes series.

1. See Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part I, 80 N.Y. St. B.J. 64 (Feb. 2008); Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part II, 80 N.Y. St. B.J. 64 (Mar./Apr. 2008); Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part III, 80 N.Y. St. B.J. 64 (May 2008).


5. See Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part I, 80 N.Y. St. B.J. 64 (Feb. 2008); Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part II, 80 N.Y. St. B.J. 64 (Mar./Apr. 2008); Gerald Lebovits, Legal Writer, Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part III, 80 N.Y. St. B.J. 64 (May 2008).


10. The Legal Writer recommends spell- ing up to and including the number nine and denoting figures above nine. The Bluebook and ALWD advise readers to designate numbers with numerals or spell out the numbers, but not both.

11. The Legal Writer recommends following the Tanbook. Spelling numbers from zero to nine and denoting numbers above nine with figures is easier to read.

12. The Legal Writer recommends hyphenating compound adjectives.

Example: “I’m a real estate practitio- ner.” Or: “I’m a real estate practitio- ner.” In the first example, without the hyphen, the reader understands that your real-estate practice is fake. In the second example, with the hyphen, the reader understands that you practice real-estate law. Correct hyphenation signals formality and adds clarity. Adding the hyphen won’t bother anyone. It might even impress your reader that you know the correct rule.

Don’t hyphenate when the compound is not an adjective phrase. Correct: “Family-law practitioner.” Also correct: “Practitioner of family law.” Correct: “Real-estate owner.” Also correct: “Owner of real estate.”

Having too many footnotes or endnotes will cause readers to lose focus.