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Wisdom's Idiosyncrasies

John Minor Wisdom[†]

Some of which you learned in elementary school from Miss
Thistlebottom before you had ever heard of Strunk.

* * *

Try to state the key question in the first sentence.

Give the court's holding in the first paragraph or, at least, in a short introductory section. Put the sex appeal in the first sentence and last sentence of each opinion; first paragraph and last paragraph of each opinion.

One idea to a sentence.

Present tense.

Active voice, not passive voice, as far as possible.

One word instead of two; two instead of three, five—so on.

Prefer the short word to a longer synonym.

Do not use "claims" when you mean "contends", "asserts", "argues", "alleges", "maintains", "represents", "declares", "states". The list can be expanded. You claim your umbrella. You submit a claim for \$100.

No zeros after an even number; for example—\$25.

No Latinisms, if possible; for example—prefer "later" to "subsequently", "before" to "prior to", "about" to "approximately" (I never use it except in referring to numbers). You cannot do a thing about *habeas corpus*, a suit *in rem* against a ship, and a few others.

[†] Late Judge, United States Court of Appeals for the Fifth Circuit. This piece has been formatted and only lightly edited from a manuscript dated May 31, 1990.—Ed.

No legalisms, e.g., “thereof”, “therein”, “herein”, “said”, “hereinafter”, “pursuant”. No legal or scientific jargon.

“Albeit” is stilted and obsolescent. Ditto “anent”.

No comma when the day of the month is not given—June 1970.

Do not use possessive—apostrophe—with things, except personified things, e.g., ship’s, state’s.

No weasel words—“very”, “quite”, “rather”, “somewhat”.

“Only” belongs immediately before the word it modifies. That way you avoid such inanities as “He only killed her.”

No *supra*, no *infra*. Even a judge should know that if no citation accompanies the title of a case, the case has been cited earlier in the opinion.

Do not use “implement” and “implementation” when “carry out” does just as well.

No “contacted”. (I accept “contact” only as descriptive of a certain type of lens; well, football is a contact sport.) Avoid “to contact”, or its variant forms. No “finalized”, no “authored”, unless you are prepared to say “paintered”. Rephrase. Nouns are nouns; they are out of bounds when altered to verbs or adjectives.

In these circumstances—not *under*, unless “under the circumstances” is intended to imply conditions.

Usually—*no* split infinitive. But remember Churchill’s admonition in regard to objections against ending a sentence with a preposition, “Up with this I shall not put”; that is, there are exceptions to every rule.

Jones’s, not Jones’.

No *elegant variation*. Do not be afraid to repeat.

“Usually”, not “normally”, unless you are referring to someone who is recovering from a fever.

Comma before “and” in a series of three or more.

Avoid gerund—e.g., the court’s submitting, etc.

Use lower case for the district court unless the district is mentioned; upper case for Court of Appeals.

Courts “hold”, “decide”, “find”, “conclude”; they do not “believe”; they do not “think”, at least in opinions.

“In *the* light of” is a cast-iron idiom; “in light of” is unacceptable.

“Fitted” is the preferred past tense of “fit”, not “fit”.

Forget “deem” and “deemed”.

“That” is a good and often necessary word, although it is unknown to authors of comments and notes in the law reviews.

“While” throws you off, when you mean “although”.

Always use articles—*the* plaintiffs; well, almost always.

The adjective is the enemy of the noun; the adverb is the enemy of the verb. Think of the right word.

Avoid “which”, an ugly word. Mark Twain, so the legend goes, rewrote *Innocents Abroad* without using the word “which”. Also, remember “that” is restrictive and “which” is nonrestrictive. Usually, if you would use commas to set off a clause, use “which”; if not, use “that”.

First, second, third; not firstly, secondly, thirdly . . . thirteenly . . . seventeently.

“Proved”, not “proven”—unless you are on a jury in Scotland coming in with a verdict, “Not Proven”.

“Pleaded”, not “pled”.

Most of the time “because” is more apt than “since”.

Forget “and which”. For you it does not exist.

“Virtually”, not “practically”, unless you are distinguishing “practically” from “theoretically”.

“Of” is unnecessary in “the question [of] whether”. Sometimes “of” sounds better.

Different *from*, not different *than*. You should know that.

“The fact that”: omit “the fact”.

Underline Jones in Jones held, to distinguish the case from our old friend Jones.

Do not underline the title of the case when the citation is given; underline if one party's name is given, e.g., In Miranda the Court held

When a word or phrase is quoted at the end of a sentence, I prefer the stop to be placed after the quotation marks because the quotation is part of the sentence. Of course a complete sentence that is a quotation should have the stop inside the quotation marks. I know that this practice is contrary to law review style and also the dogma of most grammarians. All of my law clerks ignore this punctuation. But punctuation should be logical.

Avoid vogue words. Current examples are “scenario”, “parameters”, and “interface”; there are many others.

Beware of metaphors. Try as you may, you will never achieve the bizarre mixture some judges achieve. Forget the dead and dying metaphors. An admiralty case does not call for a reference to the court's “steering its way through the muddy waters”. If you use a metaphor, do not drag it through the opinion.

“To”, not “in order to”.

Do not begin a sentence with “However”.

Avoid “get”—use “receive” or “obtain”, or some other word.

Two hours a week, not two hours per week.

Avoid the law review style of string citations with the holding in parentheses. Avoid a sentence having one or more citations in the middle. I know that this will be difficult for a former editor of a law review, but such sentences are boring, and a citation with a holding in parentheses in the middle of the sentence breaks the thought.

Do not say “the district court failed” to consider, or anything like it. Treat district judges tenderly. Do not say “the court below”—say “district court” or “trial judge”.

Write out “percent”—one word.

Spell numbers under 10.

Be careful with your quotations: Gold “glisters” not “glistens”; the lily is “painted”, the gold is “gilded”; he was “hoist on his own petar”, not “petard”; a “little learning”, not a “little knowledge”, is a dangerous thing; it is “blood, toil, tears, and sweat”, not “blood, sweat, and tears”.

Put that glass down when you feel that the purple passage you just wrote was deathless prose. Do not drag in “heuristic” or “indeterminate” in the Critical Legal Studies sense, or other gaudy words to show the breadth of your vocabulary.

Identical *with*, not *to*; compare *with*, except in “Shall I compare thee to a summer’s day?”

Do not use the trial judge’s name in the opinion unless the judge was Ed Weinfeld, Ed Gignoux, Frank Johnson, or Alvin Rubin.

Avoid dangling constructions such as “hopefully”, “finding no error, the judgment is affirmed”, “as reconstructed by the police, Jones at first denied any knowledge of the murder”. The police must have done a great job of reconstructing Jones.

No puns, no witticisms at the expense of a litigant.

“At this point in time” is a tautological assault on the ear. Say “at this point” or “at this time”. There is nothing wrong with the words “now” or “then”.

Do not make the common mistake of using “masterful” when you mean “masterly”. Julius Caesar was masterful, i.e., imperious, domineering. Cicero was masterly in debate, i.e., through his superior eloquence. This is one of the most frequent and egregious errors you find in the writings of persons who should know better.

Citations: Generally, use Blue Book style. For the last few years I have put citations in footnotes.

COMMON MISPRONUNCIATIONS BY LAWYERS AND LAW CLERKS

New Awl-lee-uns, not Ner Orlins, as you hear it on TV, and not New Orleans.

Dis´parate, not dispar´ate.

App´licable, not applic´able.

Similarly, inex´plicable, not inexplic´able.

“Err” is “ur”, not “air”; “erred” is not “aired”.

Admin´istrative, not administra´tive.

Contrary to the way you have been pronouncing the word, and the way you hear lawyers pronounce it, “spouse” rhymes with “rouse”, not “louse”. Webster’s Second and best edition agrees. Generally speaking, use any dictionary except Webster’s Third.

Rationale—you will not believe the correct pronunciation unless you look it up in Webster’s Second. Look it up.

* * *

In short—

Be brief. Simple is better. Forget Addison, Macaulay, and English 101. There is little I can do about it, if you are congenitally long-winded. Do not, however, be so brief that you neglect to do a thorough job of research, including research of the law reviews. I like a good article, comment, or note in point—regardless of the source. Do not limit yourself to Harvard, Yale, Stanford, Chicago, and Michigan reviews.

I call these suggestions “Wisdom’s Idiosyncrasies”, because I do not want you to think that the law of the Medes and Persians is in effect in Room 200 of the John Minor Wisdom U.S. Court of Appeals Building.