

# From the Judge's Desk to Your Hands

## Legal Writing Tips from the Bench

*Legal Writing: A Judge's Perspective on the Science  
and Rhetoric of the Written Word*

Hon. Robert E. Bacharach (American Bar Association 2020),  
168 pages

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“Effective legal writing calls not only for artistry but also for scientific understanding,” observes Tenth Circuit jurist, Judge Bacharach, in his new book on legal writing, *Legal Writing: A Judge's Perspective on the Science and Rhetoric of the Written Word*.<sup>1</sup> Taking it a step further, Judge Bacharach reminds us that while an understanding of the science behind legal writing is important, we must also remember that legal writing is an art.<sup>2</sup> Throughout the book, Judge Bacharach guides the reader on how to perfect this science and art by using examples from both written word and speeches alike. From junior scholars to experienced judges, legal writers can benefit from adding this book to their library as it addresses the “traditionalist” viewpoints many of us have been taught, and justifications for deviations from the same.<sup>3</sup> Judge Bacharach not only describes his guidance but executes that exact same guidance throughout the book itself. Thus, the reader is able to experience the effectiveness of writing with science and rhetoric in mind.

Structurally, the book is written in an easy-to-follow format, with eleven chapters, each comprised of its own subheading. Chapter One,

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<sup>1</sup> HON. ROBERT E. BACHARACH, *LEGAL WRITING: A JUDGE'S PERSPECTIVE ON THE SCIENCE AND RHETORIC OF THE WRITTEN WORD* xi (2020).

<sup>2</sup> *Id.* at xii.

<sup>3</sup> *Id.* at 41, 91, 95, 111, 143.

*Introductions*; Chapter Three, *Headings*; Chapter Four, *Fact Sections*; and Chapter Nine, *Conclusions*, can be described as the overall essentials for what virtually all memorandums and briefs must contain.<sup>4</sup> The book's *Introductions* Chapter begins with a section on *Context* and supplies the reader with information needed to craft a "meaningful introduction" while operating as an example of the same.<sup>5</sup> Within each subheading the reader is provided with examples of successful execution of the topic at hand.<sup>6</sup> The *Introductions* chapter concludes by explaining to the reader that it is important to be clear and concise while expressing what is essential for the reader to follow the rest of the argument.<sup>7</sup> It is my hope that I have executed the same in the introductory paragraphs of this review.

Chapter Two, *Organization*, is placed near the beginning of the book, instructing the reader on organization before moving to the pieces that construct the document.<sup>8</sup> Though not literally included as a section of a legal writing document, like an Introduction or a Statement of Facts, organization is certainly required with respect to any writing piece.<sup>9</sup> Judge Bacharach instructs the reader to focus on three guiding principles: "(1) parallelism, (2) logical sequence, and (3) development of the point before responding to the adversary's argument."<sup>10</sup> After elaborating on these principles, the reader is instructed to edit for clarity, a theme visited throughout the book.<sup>11</sup> It logically follows that the reader is next instructed on how "to crystallize the organization" via the *Headings* chapter.<sup>12</sup> Next, Chapter Four, *Fact Sections*, starts with the theme seen throughout: clarity.<sup>13</sup> The chapter guides the reader on selecting the appropriate organizational framework and reemphasizes the use of headings.<sup>14</sup> Though it follows much later, Chapter Nine, *Conclusions*, also emphasizes the need for clarity and quickly provides an example to "crystallize" what had been developed up until that point in the document.<sup>15</sup> It's worth noting that these chapters comprise only a small portion of the book, thus providing experienced practitioners with the opportunity to quickly refresh and review the pointers while simultaneously not overwhelming the law student or recent grad with information overload on best writing practices.

Moving on from these overall essential chapters, Chapter Five, *Sentences*, gets into the meat of the science, citing to works in the fields of

4 *Id.* at 1–17, 25–29, 31–36, 146–47.

5 *Id.* at 1.

6 *Id.* at 1–17.

7 *Id.* at 17.

8 *Id.* at 19–23.

9 *Id.*

10 *Id.* at 19.

11 *Id.* at 22.

12 *Id.* at 29.

13 *Id.* at 31.

14 *Id.* at 36.

15 *Id.* at 147.

neuroscience, cognitive linguistics, and psychology.<sup>16</sup> Sentence structure is analyzed in multiple ways, from how many words to use to methods of persuasion through emphasis.<sup>17</sup> Judge Bacharach effectively uses examples to illustrate each point, italicizing focal words and phrases to assist the reader in understanding the illustration.<sup>18</sup> Readers are advised to avoid “throat clearing,” a concept not always applied to the legal writing context.<sup>19</sup> “Throat clearing” refers to the use of “preliminaries,” such as, “It is important to note that . . .”<sup>20</sup> Judge Bacharach advises that such phrases “add no meaning and dilute the impact.”<sup>21</sup> Nouns and verbs are given their time to shine in this chapter, with Judge Bacharach identifying fifteen pages of “vivid verbs” with examples.<sup>22</sup> An analysis of the use of adjectives and adverbs follows shortly thereafter.<sup>23</sup> The reader can then put all of this together with the help of Chapter Six, *Paragraphs*, which emphasizes the art of . . . emphasizing, for lack of a better word.<sup>24</sup> As a technique, Judge Bacharach advises writing paragraphs that are “between three and eight sentences.”<sup>25</sup> Naturally I found myself rereading the preceding paragraphs to count the sentences and noting where a paragraph could use a trim. Fortunately, there was not much to trim.

After the in-depth discussion of sentences and paragraphs, Judge Bacharach drills down even further with Chapter Seven and the explanation of effective word selection through diction.<sup>26</sup> Having recently left a position as a junior associate, this Chapter required me to “unlearn” some of the word selection that had been passed down to me by the “traditionalists” I have learned from over the course of my career. Judge Bacharach includes a number of example substitutes to use in place of some of our profession’s most beloved words (*e.g.*, “hereinafter” and “arguendo”).<sup>27</sup> Readers are advised to avoid a practice that I have been taught and have also taught my students: using the name of your client while depersonalizing your adversary.<sup>28</sup> Judge Bacharach asserts that avoiding this practice will help the judge remember the parties, posing to the reader, “Isn’t that what you want?”<sup>29</sup> Further, Judge Bacharach advises readers to avoid the “traditionalist” style of “elegant variation.”<sup>30</sup> This style refers to avoiding the use of repetitive words in writing and instead using

16 *Id.* at 37–99.

17 *Id.* at 41–46, 49–67.

18 *Id.*

19 *Id.* at 90.

20 *Id.*

21 *Id.*

22 *Id.* at 73–88.

23 *Id.* at 95–96.

24 *Id.* at 101.

25 *Id.* at 102.

26 *Id.* at 109–21.

27 *Id.* at 113–14.

28 *Id.* at 116.

29 *Id.*

30 *Id.* at 111.

synonyms to vary the language.<sup>31</sup> He poses to the reader the following: If the legislature used two synonyms in a statute, would you not “suspect some subtle difference” in the meaning?<sup>32</sup> He has a point.

Judge Bacharach next plunges into the world of grammar, stating that he does “not purport to summarize all or even many of our common rules of grammar.”<sup>33</sup> Nevertheless this chapter is quite comprehensive, and a review of such here would prove futile. I did hope to resolve the debate surrounding the Oxford comma once and for all, but, unfortunately, I cannot rely upon this text to prove my side of the Oxford comma debate as the discussion was omitted. After touching on Quotations in Chapter Ten, the book concludes with a discussion of typography in Chapter Eleven. Each subheading acts as a checkbox on a checklist, thus providing the reader with a resource to use for each piece of legal writing.<sup>34</sup> It’s a resource I will use moving forward in my own writing.

For someone who began learning the art of legal writing not long ago and who now teaches it, Judge Bacharach’s book was exactly the perspective I needed as both a scholar and an educator. The chapters are structured in a way that logically progresses so that the reader can follow naturally and easily reference them at a later time. The book’s organization makes it an excellent go-to guide where a reader can easily and quickly refer to the table of contents and enumerated subheadings for guidance. For the busy practitioner, this means more time focusing on billable hours. While the book surely isn’t meant to act as a textbook, it would be appropriate supplemental reading in a legal writing course. For some students, the review of grammar alone in Chapter Eight could prove quite beneficial, as the chapter is a high-level overview that can keep the attention of the student who thinks he or she already knows all necessary grammatical concepts. Further, the book gets straight to the point and is delivered in a style that feels like it was written by an experienced mentor—that it is authored by a circuit judge may prove an even bigger influence on some students. Overall, the book proves to be valuable to experienced practitioners, law students, and other legal writers.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 123.

<sup>34</sup> *Id.* at 153–58.