

Legal Alert

July 22, 2015

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QUESTION: WHAT LEGAL WRITING LESSONS HAVE I LEARNED FROM THE U.S. SUPREME COURT?

ANSWER: THE SUPREME COURT JUSTICES WRITE AT LEVELS THAT SHOULD NOT BE ATTEMPTED BY US MERE MORTALS!

I always strive to improve my legal writing style. I look for role models to help me improve in the:

- Application of the correct legal tests for analyzing legal issues;
- Careful, complete, and thoughtful analysis of the issues;
- Thoughtful and correct uses of legal terminology;
- Proper citations to weighty legal precedents; and
- Professionalism and collegiality in dealing with legal adversaries.

What better place to look for standards than the U.S. Supreme Court?

The highest level of legal writing comes from the United States Supreme Court. So I adopted the writings of the Justices as my models.

Application of the correct legal tests for analyzing legal issues.

In selecting the proper legal standard to decide an issue, I was guided by Justice Kagan's concurring opinion in *Reed v. Town of Gilbert*, 576 U.S. ____ (2015). The question was whether the Town of Gilbert, Arizona could impose more restrictive requirements on directional signs for church services, than for political ads. Justice Kagan set forth the applicable test for analyzing this significant First Amendment issue. The law restricting directional signs to church services, "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test."

Lesson 1: Meet the laugh test!

Careful, complete, and thoughtful analysis of the issues.

Analyzing important legal issues carefully is important. I learned from Justice Breyer the skill of analyzing whether a houseboat is a "vessel" under admiralty law. Justice Breyer wrote in *Lozman v. Riviera Beach*, 568 U.S. ____ (2013):

Not every floating structure is a "vessel." To state the obvious, a

wooden washtub, a plastic dishpan, a swimming platform on pontoons, a large fishing net, a door taken off its hinges, or Pinocchio (when inside the whale) are not “vessels,”....

Lesson 2: “Three men in a tub” are not in a “vessel.”

Thoughtful and correct uses of legal terminology.

Justice Scalia taught me some legal concepts that I didn’t learn in law school: “The Court’s next bit of jiggery-pokery involves other parts of the Act...” *King v. Burwell*, 576 U.S. ____ (2015).

Also the “disappearing trail of its legalistic argle-bargle...” was an inciteful comment for my future briefs. *United States v. Windsor*, 570 U.S. ____ (2013) (Justice Scalia dissenting.)

Lesson 3: Does the argle-bargle hide the jiggery-pokery?

Weighty legal precedents.

Justice Kagan in *Yates v. United States*, 574 U.S. ____ (2015) set the standard: “See generally Dr. Seuss, *One Fish Two Fish Red Fish Blue Fish* (1960).”

Lesson 4: Cite to important source documents!

Courtesy to legal adversaries.

“[T]he majority’s merits holding” is “remarkable” due to “how rootless and shifting its justifications are.” Moreover: “It takes real cheek for today’s majority to assure us...” because, “Lord, an opinion with such scatter-shot rationales...can be distinguished in many ways.” Thank you Justice Scalia in *United States v. Windsor*!

Lesson 5: “I respectfully dissent.” Justice Alito in *Windsor*.

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