Write Like a Lawyer

KAREN ALICIA SHAW
DIRECTOR OF GRADUATE LEGAL STUDIES
ADJUNCT PROFESSOR OF LEGAL WRITING
LOYOLA UNIVERSITY CHICAGO
SCHOOL OF LAW
That pursuant to the RICO Act, Defendants extortive activities constituted a Pattern of Racketeering activity and conspiracy involving violations of 1956(a)(1)(B)(ii), and 18 U.S.C. § 1341 (wire fraud—the use of interstate mail or wire facilities, here telephone and facsimile transmissions), or the causing of any of those things promoting unlawful activity), and 18 U.S.C. § 1951 (interference with commerce and extortion by using and threatening to use legitimate governmental powers to obtain an illegitimate objectives under color of official right by wrongful plan, extortion, intimidation and threat of force and/or other unlawful consequence and through fear and misuse of there office to obstruct, hinder, interfere with, and/or affect commerce and the use and enjoyment of Plaintiffs' property and obtaining, as uniformed public officials payment for unwanted services to which they were not entitled by law, attempting to conceal from the United States of America their true and correct income and the nature thereof so obtained from Plaintiffs in order to attempt to evade paying lawful taxes thereon in violation of 26 U.S.C. § 7201, et seq., thereby using the governmental powers with which they have been entrusted to gain personal or illegitimate rewards and payments which they knew or should have known were made and/or obtained in return for the colorable official acts as aforesaid, and knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity all in violation of RICO and the other laws set forth herein, inter alia, as well as acts chargeable under any of the following provisions of the laws of the State of Illinois 720 ILCS 5/33–3(d) (official misconduct); 720 ILCS 5/12–11 (criminal home invasion); 720 ILCS 5/19–4 (criminal trespass to a residence) 720 ILCS 5/19–4; (theft 720 ILCS 5/16 (a)(1) & (2) by knowingly obtaining or exerting unauthorized and/or through threat control over Plaintiff's property as aforesaid.
Standard v. Nygren, 658 F.3d 792 (7th Cir. 2011)

• A good example of bad legal writing
  • Lacking in proper punctuation
  • Basically incomprehensible
  • Complete with grammatical, typographical and syntactical errors
THE FUNDAMENTALS OF LEGAL WRITING

- Good writing is writing in “plain English”

- Legal Writing is a formal process of writing in “plain English” that includes and embodies technical legal language and phrases and has a core purpose to illustrate and to analyze the law as it relates to certain fact scenarios and/or circumstances.

- Good Legal Writing . . .
  - Includes plain English and avoids legalese
  - Is clear and concise without distorting the true meaning of what the law is saying or the analysis of a legal issue
  - Is comprehensive to apprise the reader and written to a specific audience

- General Types of Legal Writing
  - Objective (e.g., legal office memorandum)
  - Persuasive (e.g., trial or appellate brief)

- Other types of Legal Writing includes the drafting of legal documents such as a contract or a will.
**Key Similarities with Other Types**
- Written in plain English
- Written for a specific audience
- Uses correct grammar and applies standard writing rules
- Practicing helps with overall improvement and effectiveness
- Requires editing and proof reading

**Key Differences with Other Types**
- Uses legal terms of art and legal terminology
- Written to a specific audience to predict an outcome or to persuade for a specific outcome
- Very formal and adheres to a specific structure and format
- Editing and proof reading is a lengthy process and requires the writing of multiple drafts before the finished product
- Heavily relies upon court decisions and statutes and requires the use of citations according to legal style manuals
The essential procedure for *Legal Analysis*

- Applying the law to a factual situation in order to determine or persuade for a specific outcome

- The basic process and approach for *Legal Analysis*
  - Synthesizing legal authorities
  - Determining how facts apply to legal authorities
LEGAL WRITING AND THE PRACTICE OF LAW

• Lawyer = Writer
• Lawyers Have a Duty to Produce Good Legal Writing
• All Lawyers Must Write Well $\Rightarrow$ $\Rightarrow$ For the Reader

• Examples of Usage in Practice
  • Legal (Office) Memo vs. Legal (Court) Brief
    • Predictive vs. Persuasion
    • Objectivity vs. Advocacy
    • Office vs. Court
AN OVERVIEW OF THE LEGAL MEMO

- **Purpose and Function**
  - Audience
    - The law office (for attorneys within a law firm and for future reference within the law office)
  - Predictive and Objective
    - To provide an accurate understanding of a legal issue
    - To predict how a legal issue may be resolved (recognizes the strengths and the weaknesses within a legal matter)
    - To provide an informed decision on how to proceed with a case

- **Common Names**
  - “Office Memorandum”
  - “Legal Memorandum”
  - “Office Memo”
  - “Legal Memo”

- Written “TO:” a partner or another attorney within a law firm/“FROM” the law clerk or an attorney within a law firm
THE LEGAL MEMO FORMAT

• General Format includes:
  • A Heading:
    • TO: Assigning Attorney’s First/Last Name and Title
    • FROM: Your First/Last Name and Title
    • DATE: Date of Submission
    • RE: Subject of the Legal Memo

  • QUESTION PRESENTED: Statement of the legal issue

  • BRIEF ANSWER: Statement of the answer to the legal issue

  • STATEMENT OF FACTS: Background and relevant facts regarding the legal issue

  • APPLICABLE STATUTE: e.g., Statutory Law (included if relevant to the legal issue)

  • DISCUSSION: Legal Analysis - synthesizing of legal rules and case law; applying the law to relevant facts

  • CONCLUSION: Summation of the findings from the legal analysis
AN OVERVIEW OF THE LEGAL BRIEF

- Purpose and Function

- Audience
  - The court – judge/justices (*with appropriate jurisdiction to hear the case*)

- Persuasion and Advocacy
  - To present the client’s case
  - To persuade the court on how the issues should be resolved
  - To persuade the court to rule in favor of the client (*rebuts any counter arguments*)

- Common Names
  - “Memorandum of Law”
  - “Legal Brief”
  - “Brief”
  - “Trial Brief”
  - “Appellate Brief”
THE LEGAL BRIEF FORMAT

General Format includes:

CASE CAPTION & TITLE OF DOCUMENT
Identifies the court, the case, and the document presented

INTRODUCTION
Introduces the judge to the nature of the case, the parties, the motion or other procedural events that has led to the filing of the brief, requested relief, and preliminary legal points justifying the relief; sometimes called preliminary statement

QUESTION PRESENTED
States the underlining legal issue and factual context in which they have arisen and phrased favorably to your client’s position; not found in all briefs

STATEMENT OF FACTS
Sets out the facts relevant to the legal issues addressed by the brief, as well as the context necessary for understanding those facts

APPLICABLE STATUTE
Includes the relevant portions of the applicable statute in an appropriate format - (only included if relevant to the legal issue)

ARGUMENT
Mandatory precedent analyzed and used strategically to persuade the judge to rule in your client’s favor

CONCLUSION
Refers to the body of the argument made with a formal closing (e.g., respectfully submitted)
## THE LEGAL MEMO vs. THE LEGAL BRIEF

<table>
<thead>
<tr>
<th><strong>Legal Memo</strong></th>
<th><strong>Legal Brief</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective Discussion</strong></td>
<td><strong>Persuasive Argument</strong></td>
</tr>
<tr>
<td>➢ State the relevant law/rules and legal principles</td>
<td>➢ States the relevant law/rules and legal principles</td>
</tr>
<tr>
<td>➢ Illustrate the relevant case law</td>
<td>➢ Illustrate the relevant case law</td>
</tr>
<tr>
<td>➢ Provides an accurate understanding of the legal issue(s); <strong>predicts</strong> how the legal issue(s) may be resolved by recognizing the strengths and the weaknesses within the case; and provides an informed decision on how to proceed with the client’s case</td>
<td>➢ Advocates on behalf of the client according to the legal issues; <strong>persuades</strong> the court on how the legal issues should be resolved; and persuades the court to rule in favor of the client while rebutting the counter arguments</td>
</tr>
</tbody>
</table>
**SAMPLE PARAGRAPH STRUCTURE**

**LEGAL MEMO (DISCUSSION SECTION)**

**LEGAL BRIEF (ARGUMENT SECTION)**

**UMBRELLA SECTION**
- Governing Rules

**RULES SYNTHESIS**
- Specific Rule(s) from Court Decision(s)

**CASE ILLUSTRATIONS**
- Thesis Statement, Case Facts, Court Holding, and Court Reasoning

**RULE APPLICATION**
- Applying the rules from the legal authorities to client’s facts

*Write Like a Lawyer - Professor Karen Alicia Shaw*
LEGAL WRITING & THE 5 Minute PICTURE GAME

WHAT DO YOU SEE IN THIS PICTURE?

Write Like a Lawyer - Professor Karen Alicia Shaw
LEGAL WRITING &
THE 5 Minute PICTURE GAME

1) Do you see an old woman or do you see a young woman in the picture?

2) Can you see one woman more than the other?

3) Writing Objectively: Describe a few characteristics of the woman that you see. Are there enough details within the picture to describe a few characteristics of another type of woman? If yes, also, describe her.

4) Writing Persuasively: Write a statement indicating that there is only one type of woman in the picture and a reason why there is no other type of woman displayed - for example, arguing that the other features within the picture do not display any other type of woman.

*Take a moment to write down your answers.*
Bob Smith/Dr. Charles Levi

Tortious Battery Case
Assignment Memorandum

TO: Law Clerk
FROM: Partner
Date: August 12, 2020
Re: Bob Smith/Dr. Charles Levi – Tortious Battery Case

Bob Smith has retained our firm as a result of a wrongful amputation of his leg by Dr. Charles Levi at Take Care Memorial Hospital.

About 12 hours after eating dinner on July 1, 2020, Mr. Smith suffered extreme abdominal pain and cramping. His wife, Ann Smith, rushed him to the emergency room of Take Care Memorial Hospital.

At Take Care Memorial, Mr. Smith was triaged and admitted for observation. Due to the severity of his condition, his physician at the time, Dr. Preston Brown, recommended an overnight stay at the hospital for more tests the next day. Apparently, Dr. Brown determined that Mr. Smith was suffering from food poisoning. Mr. Smith agreed to Dr. Brown’s recommendation.

Tim Trott was the attending nurse and coincidentally, was Mr. Smith’s high school classmate. Mr. Smith and his wife, however, did not recognize Nurse Trott.

Throughout high school, Nurse Trott was jealous of Mr. Smith and thought it would be funny to play a trick on his “old friend”. Therefore, Nurse Trott changed Mr. Smith’s medical record to read amputation of his right leg instead of treatment for food poisoning. Nurse Trott, however, only planned to allow the physician to prepare Mr. Smith for amputation and cause him great fear. Nurse Trott also planned to stop the procedure before anything happened to Mr. Smith’s leg.

The next day, since Mr. Smith’s medical record indicated amputation of his right leg, he was moved to the surgical unit of the hospital. Neither Dr. Brown nor Nurse Trott was aware that Mr. Smith had been moved to the surgical unit. Dr. Charles Levi, the surgeon on duty, saw Mr. Smith, read his medical record, and instructed another nurse to prepare Mr. Smith for amputation. After Mr. Smith heard this instruction, he screamed “NO!” and tried to push the nurse away while she was quickly approaching him. The nurse held him down so that Dr. Levi could sedate him for the procedure. Because the nurse held Mr. Smith down, he had no way to get away from Dr. Levi or the nurse. Dr. Levi carried out the amputation of Mr. Smith’s right leg. After hearing that her husband’s leg had been amputated, Mrs. Smith charged at Dr. Levi with her purse and hit him several times on his head. Dr. Levi suffered a few bruises from the attack.

As a result of the amputation, Mr. Smith is now confined to a wheelchair and wants to know if he has a viable cause of action against Dr. Levi for his injury. We would like to send Mr. Smith a response via a client letter. I need your assistance with analyzing Mr. Smith’s case with regard to the issue of battery. Other law clerks and attorneys are working on the various other legal issues in his case.

Using these facts and the provided case excerpt from Garratt v. Dailey on the next page, answer the questions that follow. Your answers will be incorporated into a legal memorandum (a legal memo) that you will complete at a later date and also at a later date, your responses to some of these questions may be included within a trial brief (a legal brief) should the firm decide to pursue litigation.

Thank you.
Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955)

CASE BRIEF

• Facts
• Procedural History
• Issue
• Holding
• Reasoning
• Disposition
• Rule of Law
Questions to Consider for Drafting the Legal Memorandum

1) Regarding our client, Mr. Smith, what legal issue will need to be analyzed?
2) Do you think Garratt v. Dailey will be helpful for analyzing Mr. Smith’s problem? Why or why not?
3) In order to analyze Mr. Smith’s legal issue, you first need to synthesize Garratt v. Dailey. How would you go about synthesizing Garratt v. Dailey?
4) Regarding Garratt v. Dailey,
   a. What are the relevant facts from the case?
   b. What legal issue did the court consider?
   c. How did the court rule or what did it decide regarding the legal issue?
   d. What reasons did the court provide for its decision?
   e. What case facts are similar to Mr. Smith’s situation?
   f. What case facts are unlike Mr. Smith situation?
5) What are the strengths of Mr. Smith’s case?
6) What are the weaknesses of Mr. Smith’s case?
7) Based on Garratt v. Dailey, do you think that Mr. Smith has a viable cause of action against Dr. Levi for battery? Why or why not?
Questions to Consider for Drafting the Trial Brief

1) Following from question #7 above, even if you determined that Mr. Smith does not have a viable cause of action against Dr. Levi for battery, what persuasive arguments could be made in his favor?

2) Considering your response in this section for question #1, what counter arguments, if any, could Dr. Levi make against Mr. Smith?

3) In your opinion, is Mrs. Smith’s charging at Dr. Levi with her purse and hitting him several times on his head relevant and do these facts help or hurt an argument in favor of Mr. Smith? Why or why not?

4) In your opinion, is Nurse Troll’s action of switching Mr. Smith’s medical record relevant and does it help or hurt an argument in favor of Mr. Smith? Why or why not?

5) What additional information would you need to build a persuasive argument in favor of Mr. Smith?
SAMPLE PARAGRAPH STRUCTURE
**LEGAL MEMO (DISCUSSION SECTION)**
**LEGAL BRIEF (ARGUMENT SECTION)**

UMBRELLA SECTION
*Governing Rules*

RULES SYNTHESIS
*Specific Rule(s) from Court Decision(s)*

CASE ILLUSTRATIONS
*Thesis Statement, Case Facts, Court Holding, and Court Reasoning*

RULE APPLICATION
*Applying the rules from the legal authorities to client’s facts*

RECAP!
SAMPLE PARAGRAPH STRUCTURE
Bob Smith/Dr. Charles Levi

**LEGAL MEMO (DISCUSSION SECTION)**
**LEGAL BRIEF (ARGUMENT SECTION)**

UMBRELLA SECTION
Governing Rules – 1 Restatement of Torts

RULES SYNTHESIS
Specific Rule from Garratt v. Dailey

CASE ILLUSTRATIONS
Garratt v. Dailey
Thesis Statement, Case Fact, Court Holding, and Court Reasoning

RULE
APPLICATION
Applying the rule from
Garratt v. Dailey to Mr. Smith’s facts

Write Like a Lawyer - Professor Karen Alicia Shaw
LEGAL MEMO (DISCUSSION SECTION)

The First Restatement of Torts provides a definition for the law of battery that has been applied by state courts. See e.g., Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955). A battery is “the intentional infliction of a harmful bodily contact upon another.” Garratt, 279 P.2d at 1093. An actor is liable under the tort of battery by engaging in “[a]n act which directly or indirectly, is the legal cause of a harmful contact with another’s person.” 1 Restatement, Torts 29, § 13. Specifically, liability is imposed if “(a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, [ ] (b) the contact is not consented to by the other or the other’s consent [ ] is procured by fraud or duress, and (c) the contact is not otherwise privileged.” Id.

This memorandum will determine whether Mr. Smith has a viable cause of action under the tort of battery against Dr. Levi. Specifically, this memorandum will focus on the issue of intent since there is no issue of consent or privilege raised by the facts presented. The facts reveal that Mr. Smith only consented to treatment for food poisoning and that due to the switch of his medical records, Dr. Levi carried out the unauthorized amputation of Mr. Smith’s leg. Therefore, the only issue to be discussed is the intent element of battery.

LEGAL BRIEF (ARGUMENT SECTION)

The First Restatement of Torts provides a definition for the law of battery that has been applied by state courts. See e.g., Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955). A battery is “the intentional infliction of a harmful bodily contact upon another.” Garratt, 279 P.2d at 1093. An actor is liable under the tort of battery by engaging in “[a]n act which directly or indirectly, is the legal cause of a harmful contact with another’s person.” 1 Restatement, Torts 29, § 13. Specifically, the liability is imposed if “(a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and (b) the contact is not consented to by the other or the other’s consent [ ] is procured by fraud or duress, and (c) the contact is not otherwise privileged.” Id.

This brief will argue that Mr. Smith has a viable cause of action under the tort of battery against Dr. Levi. Specifically, this brief argues that Dr. Levi’s actions satisfies the intent element of battery. The elements of consent and privilege are not raised by the facts presented and therefore, are not argued in this brief. The facts reveal that Mr. Smith only consented to treatment for food poisoning and that due to the switch of his medical records, Dr. Levi carried out the unauthorized amputation of Mr. Smith’s leg. Therefore, the only issue to be argued is the intent element of battery.
The intent element of battery is satisfied if an actor knows to a substantial certainty that his actions will result in a harmful or offensive contact even if he or she did not intend the result. Garratt, 279 P.2d at 1093.
A person that moves a chair when another is attempting to sit were the chair was may satisfy the intent requirement under battery if he knew with substantial certainty that his actions would result in the other person falling to the ground. See Garratt, 279 P.2d at 1093. In Garrett, the defendant, a five year old boy, moved a lawn chair before the plaintiff, an adult, sat in the chair causing the plaintiff injury. Id. at 1092. The court held that the defendant’s actions could satisfy the intent requirement if he knew with substantial certainty that the plaintiff would attempt to sit where the chair had been and therefore, the court remanded the case for clarification. Id. at 1093. The court reasoned that regardless of the defendant’s age or his lack of intent to harm the plaintiff or play a prank, he could be held liable if the lower court determines that he had such knowledge. Id. at 1094.
SAMPLE DRAFTED SECTIONS
Bob Smith/Dr. Charles Levi

LEGAL BRIEF (ARGUMENT SECTION)
In this case before the Court, Dr. Levi’s action of amputating Mr. Smith’s right leg satisfies the intent element of battery because Dr. Levi knew with substantial certainty that the procedure was offensive to Mr. Smith. The intent element of battery is satisfied if an actor knows to a substantial certainty that his actions will result in a harmful or offensive contact even if he or she did not intend the result. Garratt, 279 P.2d at 1093. Although the court in Garrett could not reach a definitive conclusion regarding whether intent was established, it remanded the case to the trial court instructing that if the defendant knew with substantial certainty that the plaintiff would sit where he moved the chair, then the defendant satisfied the intent requirement. Similar to Garrett, Mr. Smith argues that like the chair being moved from the plaintiff before she sat down, the procedure conducted by Dr. Levi was harmful and offensive. Dr. Levi, in conducting the amputation, probably knew with substantial certainty that his actions would cause apprehension and an offensive contact because after Mr. Smith heard him instruct a nurse to prepare him for amputation, he screamed “NO” and tried to push the nurse away while she tried to hold him down so that he could be sedated for the procedure. Therefore, in Mr. Smith’s case, there are sufficient facts for this Court to conclude that Dr. Levi satisfied the intent requirement.

LEGAL MEMO (DISCUSSION SECTION)
In Mr. Smith’s case, Dr. Levi’s action of amputating Mr. Smith’s right leg probably satisfies the intent element of battery because Dr. Levi knew with substantial certainty that the procedure was offensive to Mr. Smith. The intent element of battery is satisfied if an actor knows to a substantial certainty that his actions will result in a harmful or offensive contact even if he or she did not intend the result. Garratt, 279 P.2d at 1093. Although the court in Garrett could not reach a definitive conclusion regarding whether intent was established, it remanded the case to the trial court instructing that if the defendant knew with substantial certainty that the plaintiff would sit where he moved the chair, then the defendant satisfied the intent requirement. Similar to Garrett, Mr. Smith could argue that like the chair being moved from the plaintiff before she sat down, the procedure conducted by Dr. Levi was harmful and offensive. Dr. Levi, in conducting the amputation, only followed what was indicated in the medical charts. Although Mr. Smith consented to being treated for food poisoning, he did not provide consent for amputation. Dr. Levi probably knew with substantial certainty that his actions would cause apprehension and an offensive contact because after Mr. Smith heard him instruct a nurse to prepare him for amputation, he screamed “NO” and tried to push the nurse away while she tried to hold him down so that he could be sedated for the procedure. Therefore, in Mr. Smith’s case, a court could probably determine that there are sufficient facts to conclude that Dr. Levi’s actions satisfies the intent requirement.
• Use *transitional words or phrases* between paragraphs and sentences to show connections/relations and to create a roadmap as you build your analysis within your discussion or argument.

<table>
<thead>
<tr>
<th>Examples of Transitional Words and Phrases</th>
</tr>
</thead>
<tbody>
<tr>
<td>• “Similarly”</td>
</tr>
<tr>
<td>• “In contrast”</td>
</tr>
<tr>
<td>• “In comparison”</td>
</tr>
<tr>
<td>• “In addition”</td>
</tr>
<tr>
<td>• “Furthermore”</td>
</tr>
<tr>
<td>• “Moreover”</td>
</tr>
<tr>
<td>• “Likewise”; “Unlike;”</td>
</tr>
<tr>
<td>• “First”, “Second”, “Third”, …, “Finally”</td>
</tr>
</tbody>
</table>
A FEW TIPS FOR EFFECTIVENESS
Grammar and Style
(continued)

• Avoid **compound constructions**:

<table>
<thead>
<tr>
<th>Replace:</th>
<th>With:</th>
</tr>
</thead>
<tbody>
<tr>
<td>At that point in time</td>
<td>Then</td>
</tr>
<tr>
<td>In relation to</td>
<td>About, Concerning</td>
</tr>
<tr>
<td>In the event that</td>
<td>If</td>
</tr>
<tr>
<td>In the nature of</td>
<td>Like</td>
</tr>
<tr>
<td>Prior to</td>
<td>Before</td>
</tr>
<tr>
<td>Subsequent to</td>
<td>After</td>
</tr>
<tr>
<td>For the reason that</td>
<td>Because</td>
</tr>
</tbody>
</table>

• Avoid **writing in**:

<table>
<thead>
<tr>
<th>Passive Voice</th>
<th>Legalese</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Hides the actor (subject) from the reader (however, there may be exceptions – e.g., the writer intends to hide the actor for reasons of persuasion)</td>
<td>• Examples include: “whereas”, “aforementioned”, “hereinafter, to wit”, “the said defendant”, “thenceforth”, “hitherto”.</td>
</tr>
<tr>
<td>• Hint: Passive voice is being used when: the word “by” precedes the actor</td>
<td></td>
</tr>
</tbody>
</table>
QUESTIONS?
THANK YOU