

*Findings of Fact; Understanding Legal Writing*

Russel Thompson

English 407 Dr. Jablonski

Rhetorical Analysis Project

*Finding of fact*, a legal document produced by Judge Rodney Burr, is an example of typical legal writing and gives insight to the function of writing in the legal community. A common legal idiom is the life of a man can depend on proper comma placement. If such is the case then the rhetoric used in legal writing helps maintain governments, corporations, agencies, and individual freedoms. Our society is one that depends on law, and the professionals that defend and uphold such use writing tactics to get their purposes accomplished. All the persuasive and other tactics used in legal writing give it its own style, context, and genre of writing. Audience and purpose in legal writing has an effect on the documents rhetoric. The legal context, and discourse community is one important governing factor of why legal writing is the way it is. Legal writing has a style that is very technical, professional, and personality-less yet each writer shows individual style. And style in the writing gives it the intended purpose. There are many other things that account for legal rhetoric being the way it is, the very structure even is done to accomplish various outcomes. The genre in which the document is classified helps understand why the document is written the way it is. To understand legal writing, audience, purpose, context, style, and genre must be carefully considered.

The *findings of fact* document is a very common example of writing that one does in the career. The author of the document is Judge Rodney Burr, of the city of Henderson court. The document purpose as the name implies is to come to a resolution in regards to the persons involved. It outlines the facts and draws a conclusion. The career requires extensive legal background, which means that all judges have legal writing experience

before becoming a judge. Writing is a part of every legal career, becoming a judge is no exception.

### ***Purpose and Audience in the Legal Document***

A legal documents purpose is what guides the writing and it has a distinguishable affect, likewise, although a differing affect, audience of any given document has specific affects on the writing. Legal documents typically have a purpose to persuade its reader, inform its reader, or come to a decision or conclusion. There are other purposes as well, and each differing purpose changes parts of the document, and is the reason why parts of the document are written the way they are. Audience plays a central role in the function of a document. Typically documents are written for non lawyer persons, but many other documents are written to different judges. Some documents have a combination of lawyer readers and non lawyer readers, and document resembles that because of the way it is written. Other concepts like audiences purpose and social status will help understand some rhetoric of the document.

To persuade the reader documents must be more centered to the reader's interest, and appeal to the things that would change their feelings towards what is wanted of the writer. A typical legal writing with the effect to persuade would be a letter written in behalf of a client expecting various legal purposes. For example suppose a individual wanted compensation for a product that was not as it was described, and after trying to get reimbursement decides to get legal help. The lawyer would submit a letter in behalf of the client wanting compensation or a law suit would be enacted. The purpose would be to persuade the reader to settle out of court by compensation. The effect would be

appealing to what the reader thought important enough to change his already made decision to a decision of compensation.

Comparing that with another typical document purpose like to inform the reader, would show different tactics to accomplishing its purpose. Informative documents are most commonly done in the form of a “memo.” Memos provided by a lawyer to a lawyer give researched background to help the reader decide how to handle a case. The documents are full of facts, and previous court rulings. The idea behind them is not to persuade but provide the reader with an idea as to how the court will most likely rule the case in question. They are written in fact form, and show no appeals.

The purpose of the *findings of fact* documents is another typical purpose of legal documents; its purpose is to conclude. Documents that conclude are usually written as facts then a conclusion based on those facts, which is how this document is written. The facts are numerically ordered then as a fact based on the previous the conclusion systemically follows. The conclusion will always be written as based on the previous facts, for example the *findings of fact* documents states, “Pursuant to paragraph 28 of the Offer, Sellers are hereby awarded the \$5000 earnest money deposit as liquidated damages for Defendant’s breach of the contract.” The purpose of the document is to conclude and it is written in such a way to appeal to that purpose.

Audience considerations from legal writers only help the non lawyer reader when it is beneficial to the lawyer. As in the example of the lawyer writing in behalf of the consumer, the lawyer would only use legal jargon to scare the reader, and not to help the reader understand the point. The point will however be clear. Most of the audiences of legal documents are non lawyer persons, yet the writing still has a lot of legal jargon,

know as legalism, and is still difficult to understand. Here is an excerpt from a practitioner's letter to a new client. "According to Texas common law construing the construction, *Fitzgerald v. Advanced Spine Fixation Systems, Inc.*, 996 S.S.2d 864, 865 (Tex. 1999), and should hold that said claim was timely" (Schiss 47). Since it is not in the interest of the writer to have the reader understand everything, it is not written in a way that is easy for the reader to understand. Alfred Phillips in *Lawyer's Language* wrote talking about lawyers jargon, "...popular theory which suggest that the disease is fostered by lawyers themselves in pursuit of their professional interests" (Phillips 31). If lawyer can keep a superiority on the material then it will further the need for lawyers and then help their business.

Although the majority of documents are written for non lawyer readers many are written for judges and other lawyers. Two popular documents written are letters to trial judges, and letters to appellate judges. When written to a trial judge bold synopsis are commonly used, along with a heading. Often the writer will cut archaic, formulaic language. Trial judges are busy and need the information fast, and the documents, (if written well) will support the judge in that. Documents to appellate judges typically are similar but vary in how the issue is framed. The issue will be up front, and it will have good transitions and connectors. It is not quite as brief and has more (although subtle) persuasive tactics.

Documents change dramatically based on its purpose and who the reader is. Although theoretically documents will have either a persuasive, informative, or conclusionally purpose, most will documents will have a combination of two or even three. Audience factor in legal writing are interesting to look at because so often it is to

the need of the lawyers future business and not the immediate clients needs that cause the document to be written the way it is. Overall a well considered audience and purpose will help understand why it is written the way it is.

### ***The Legal Discourse Community***

The legal writing community is one that fosters strict written and unwritten rules of writing practices that coincides with the community. The writing style of the community is perpetuated through all the writers' and impacts writing and makes it the way it is. One of the most obvious impacts from the community is laws of what forms to use, and how to write some documents. They keep writing the way it is because the document will not be accepted if not used that way. There are also many unwritten rules that perpetuate the reason for writing the way its done. Many of the shared beliefs of the community are transposed into the documents and account for some of the writing habits of the community.

Legal writing has many similar characteristics in the way it is written, and an overall style that is consistent through the community. For example of common legal ways of presenting things as written in the *findings of fact* document are: "above said," or "was subject to." These practices of writing are consistent with most legal documents, for example in a different document, a memo was written, "In reference to *above said*, defendant offered protection..." The way of saying such is a normal way of writing that is through the whole legal community.

A lot of the influence of how to write stem from specific laws governing the writing. When Judge Burr was asked how individual writers come to know the expectations of what is needed in the writing he explained that court rules guide a lot of

it. He said they influence the size of paper, font, and layout of the document. The influence from specific laws mostly govern the aspects of how it is presented and not the actual writing, there are however many unwritten laws that to guide the writing.

There are many unspoken formalities that every legal writer knows to have in the documents, these are all influenced from the legal community. One example of writing that is influenced by the community is gender-neutral writing. In *Legal Writing* Linda Edwards wrote, "While the use of masculine nouns and pronouns for general reference is technically correct, most of today's good writers avoid or minimize it" (Edwards 229). Another example of community influenced writing is the use of the word judge. Although the human beings who actually decide cases are called "judges," it is customary to refer to them as "the court." This practice is especially true when it is an appellate courts, where several judges will usually participate in most decisions. For one-judge court such as a trial court, writers will use "court," or "judge," however most legal writers prefer "court." A lot of these ways of writing is steamed from the community which inadvertently influences what is good and poor writing.

A lot of these unspoken practices stem from beliefs and values that are consistent through the community known as commonplaces. Commonplaces often are unspoken rules that guide the community. One example of a commonplace in the legal community is the use of presenting a conclusion based on facts. It is a belief that by facts decisions are made. The *findings of fact* document shows this quite clear because it draws the conclusion based on previously said facts. Another example of a commonplace is the use of citation. The following is an example of legal writing that presents an act, then gives the citation. "Pursuant to our conversations of December 20, 2001, I have

conducted legal research on the question as to whether your arbitration claim was timely under the Texas Seed Arbitration Act. Tex. Agric. Code ass. 64.0069s) (Vernon 2001)” (Schiess 47). Legal documents will almost always have a citation to every law that is refer to in the document, this is a common practice through the community.

Other issues of the discourse community are concepts of writers persona of himself and his environment presented in the document, and hierarchy of the community. The writer of a legal documents can hide behind the jargon, and personality less style that is taught in law school. However the persona of the writer will always exists. In the findings of fact document the writer (Judge Burr) identifies himself by stating, “The Court finds as follows.” Judge Burr represents the court and the facts that follow are findings of the court. In the legal community serves the purpose to help individual know who is entitle to speak/write, and what is worth writing about. Writers persona of themselves are a result of their status in the community and present itself in the document as a form of different writing practices depending on their status.

### ***Legal Writings Style***

Legal writing encompasses many specific words, parses, clauses, tone, and attitude, which gives legal writing a districts style of its own. A lot of the difference between legal style and common professional style is in the choice of words used. Different words, parses and tone give the document different impression, which is important in legal documents. One reason style is so important is because a good attention demanding style will persuade the audience, which is critical with legal work. There are many specifics about legal style that are more favorable for example keeping things tight and not windy, and making sure the punch line comes last. Order of

arguments starts to play a important role depending on the intended effect. In a lot of legal writing personality is lacking, but a good legal writer need to recognize that yet still have a since of tone. Judicial writing although having many of the usual legal characteristics has some key differences. Many judges try to make their writing seem overly professional to hide possibility of indecisiveness. To have effective legal writing it is important to understand the effects of style.

Speaking generally about legal style Garner wrote, “There are no formulas for a good prose style. Removing passive-voice verbs, keeping sentences short, and using” action” verbs usually improve a piece of writing but may not result in good style” (Garner 7). Since style is a combination of so many different aspects there is no definitive style that must be used, instead keeping in mind all the different aspects will conjure a good style. Garner did indicate however that keeping in mind three types of legal style will help a writer develop a good style. He wrote, “For these three functions if the orator there are three styles, the plain style for proof, the middle style for pleasure, the vigorous style for persuasion” (Garner 8). He went on to explain that the writer who controls and combines these three concepts of style will have great endowment, because he will be able to write and speak in any way the case requires. Although too timely to explore all thee concepts they are basically as stated. The one for proof is to prove a case by facts, the one for pleasure caresses the emotion and brings a smile to the audience, and the one for persuasion dose just that, persuades by any means necessary. Although a good form for basic style, it is not the final work, there is much more that goes into good legal style.

The difference between legal writing and lay person writing is in the words used. A lot of legal work is understanding words and definitions and being able to interpret them, the way lawyers use words is central to what they do. Therefore one of the biggest differences between legal writing and other professional writing is the view of these words. In *The Elements of Legal Style* in referring to the difference between legal style and other style Garner wrote, “We use ordinary English words in extraordinary senses, and extraordinary English words in senses only ordinary to us. We *also* use and cite authority in peculiar ways” (Garner 4). To form a legal case law persons must look at each work with precise care and formulate an appropriate interpretation. They also use their own jargon, in very natural ways. When I asked Judge Burr about what separates legal writing he explained that its more technical, and there are many guidelines controlling legal writing. He also said that the words are bigger. The use of words is key to understanding writing style.

The way lawyers understand and use words, parses and tone help them give the impression they need in the documents uses which when used right will be persuasive. There are always a number of ways to say the same thing, but different ways of saying it will give different impressions about the phrase. For example one could say, “alone on the ocean,” and means the same thing as, “alone on a wide, wide sea.” The two give different feels about the same thing. Layers in their documents are similar, and use such style to get the intended effect. Talking about the difference between a generic said phrase, and one with more style, Garner wrote, “We have lost much on the meaning-the voice and the tone and the mood. We have obliterated the special way in which the *writer* chose to express himself. But each variation gives the reader a different

impression” (Garner 5). The reason lawyers choose to write the way they do is because it will give an intended persuasive effect, it gives them the impression they desire and the effect they choose.

One, basic, but still important thing legal writers can do to get good style in their document is to tighten the document, and try to keep it not so windy. Garner wrote, “To tighten your style try to reduce by twenty five percent every sentence in your first draft. Strike out every slack syllable” (Garner 55). A good legal writer should make every word have importance to what is being said.

Legal writing is often thought of as very professional and lacking any form of personality from the various writers. It is true that that the writing is quite professional, and often jargon. Personality in the document can still be achieved and writers should, although maintaining the professional front, try to achieve a personal style. Garner pointed out how although it suffers, it should be maintained. He wrote, “In most legal writing, as it happens, the personality of the writer rarely surfaces. That is not to say however, that you can write without a voice, any more than you can speak without one” (Garner 173). Style is in every part of a document, even if one attempts to write without a style, it is a sense of style to do that. Legal writing can show personality although seemingly professional.

Judicial writing has a style is even more professional and script like than usual legal writing. When asked about style in judicial writing, Judge Burr stated “each judge has their own style.” He explained that although the documents differ from each judge and they all have their own style it really is not that much versatility between them. Judicial writing should just be kept simple, and it almost always is. His document of

findings of fact supported his notion of keeping it simple. He listed approximately eleven facts then stated the judicial ruling as a fact. The document showed signs of keeping things tight. Every sentence seemed to state the minimum to show the fact. For example one fact states, "The offer stated that it was subject to Defendant qualifying for a new loan." The sentence is brief and says it with little wordiness.

A document written by a judge needs to be very clear about what it ruling is, and just as important, it need to show no sign of wavering. In *Law's Stories* Gewirtz wrote, "One of my few expectations regarding judicial opinions, for example, is that they will almost always be written in a tone of impersonality suggesting that the legal material themselves , rather than the personal desires of the judge, required the result in question" (Gewirtz 188). The style of judicial writing more so than typical legal writing will be written with as little personal style as possible, yet many judges will still develop their own style on how to accomplish this task. Each one will in the end be written as if the legal material formed the judgment and not the author.

### ***Rhetorical Strategy in Legal Writing***

To understand exactly how legal writing is written a further look, taking in account all the previously considered concepts, at persuasive, and other tactics will shed light on how documents are written. Persuasion in legal writing is fundamental to the work lawyers do. Specific figures of speech are common to legal writing and give the document an element of persuasion otherwise not possible. The law as uses facts to draw a conclusion from, those facts are presented persuasively and are intended to lead the reader to the desired destination. The findings of fact documents shows typical fact based persuasion, yet not all judicial documents use the same rhetoric. Tactics of

persuasion are in every part of the legal document, they are what drive the document to the intended destination.

Rhetoric in legal writing can be regarded as the umbrella term convening critical linguistics. In *Lawyers' Language* Alfred Phillips wrote, "Rhetoric is classically defined as the art of persuasion by discourse, discourse in this context being used in its non-technical sense. Speech or argument, therefore, is to be measured not by whether it is true, valid or sincere but by whether it is effective in persuading those to whom it is addressed" (Phillips 53). Phillips further explained that every aspect of legal writing will have differing persuasive tactics, and depending on how well written it is the persuasion will be subtle yet effective. Often it is true of legal writing the measure of effectiveness is not truth, validity, or sincerity, but effectiveness of persuasion.

Correctly used figures of speech give legal writing the desired outcome that could only come from the impression they give. Garner wrote, "Many of our most gifted legal writers have used figures of speech, or 'graces of language' – Not just insidious vagaries- to give their prose greater force. Figures of speech help make writing something more than serviceable; they help make it memorable" (Garner 147). Although not a part of all legal writing figures of speech are used and are an important part of the writing.

One commonly used figure of speech is personification in legal writing. This tactic also used in speech, helps lawyers achieve good analogies and give intended effects. One of the most popular personifications is law. Garner wrote, "We frequently personify the law, as Ronald Dworkin has observed: 'Lawyers...talk about what the law 'says' or whether the law is 'silent' about some issue or other'" (Garner 1501). Being able to personify anything gives power to the writer to demonstrate his intended affect by

use of inanimate objects. Another commonly used figure of speech in legal writing is the use of hyperbolic. Here is an example of a legal writer using hyperbole, “The law of a great nation means the opinions of half-a-dozen old gentlemen...” (Garner 158). Here the author is exaggerating by claiming that our laws are mere opinions of old folks. This is a tool used to persuade by overshooting a concept. Figures of speech are important to understand when analyzing legal writing because they can very subtly lead the reader to an intended decision.

The law takes facts and does what it can to present them persuasively in order to form a case. Peter Brooks in *Law's Stories* wrote, “The law, focused on putting facts in the world into coherent form and presenting them persuasively- to make a ‘case’ – must always be intimately intertwined with rhetoric...” (Brooks and Gewirtz 14). Lawyers will use whatever material is necessary to form a persuasive case. Brooks also wrote, “A lawyer's job is to help clients formulate the most persuasive story from the evidentiary materials available. That is what lawyers do for a living” (Brooks and Gewirtz 112). The documents show that this is indeed the way to accomplish the most persuasion. The *findings of fact* documents do this very thing. The very title “Findings of fact and conclusions of Law” suggest that the conclusion of law has been formed by the facts and it is intended to persuade the reader of the conclusion by the provided facts.

Not all judicially written documents use this formula for persuasion, every level of court often use different rhetoric. Stanford Levinson wrote, “Consider for example, the difference it might make whether we are analyzing the rhetoric of opinions of the U.S. Supreme Court or, instead, the rhetoric of opinions issued by what the Constitution labels ‘inferior courts.’ One would find, I believe, strikingly different rhetorics” (Brooks

and Gewirtz 190). Judge Burr's document is consistent with his keeping the style simple theory related to use of persuasion, he persuade by presenting facts, and drawing a conclusion based on those facts.

### ***The Rhetoric of Legal Genres***

The different types of genres or classifications of legal documents provide different ways of writing. Genre studies analyze rhetorical situations and communities, the social implications and influence of genre are and important part of studying it. The document that has been discussed thus far is classified as a *findings of fact* document. It is within the judicial community and that is how it would be defined in terms of genre. Coming from such specific elements of the document must fit the genre in which it is classified and doing such will have an impact of how the document will be written. There are many different communities if legal writing, and a variety of genre for each. Understanding the influence based on the genre will give insight to how the document was written.

When asked, Judge Burr specifically specified this document as being called a *findings of fact* document. I then asked him if because it was this type of document if it followed a pattern. He said it did, and it is a very strict pattern of how to do this type if document. Because it follows this paten the community has established as the official way of writing it, it is written to conform to the writing practices of the community. This particular form give the document many part of its since of style. As such the genre influences the writing, and is a large part of why it is written the way it is.

When I asked Judge Burr what other documents he produced he replied that he dose many "orders," and "conclusions of law." These documents are other genre's

within the judicial community. Other popular documents in the legal community is the “office memos” and the “brief”. To describe the office memo Linda Edwards wrote, “If your task was to research the law and predict objectively, as the judge will do, and explain to Walter (another lawyer) the most likely ruling, then the document you produce would be an ‘office memorandum’ or, more informally, ‘office memo.’ It would be addressed to Walters, and would predict what the judge will decide (Edwards 2). In discussing the “brief” Linda Edwards wrote, “The document you would write to persuade the judge that Johnson did not wait too long is called a ‘brief’ or a ‘memorandum of law.’ Your reader will be the judge rather than Walters, and your task will be to persuade rather than to predict” (Edwards 2). These two different, and popular legal documents genres show the difference that varying genres have in influence the way it is written. One is written to inform, and predict, and the other is written to persuade.

Every legal document has a genre in which it is defined, and as part of that genre it will conform to the way that particular genre is written. It will affect its purpose, the rhetoric used, the style that is used, and many other ways it is written. The findings of fact document show this because it follows the form of all other *findings of fact* documents and that takes a toll on how it should be written.

### ***Conclusion***

My career goal of studying law and becoming a lawyer has been influenced by my studying the way legal documents are produced. By understanding the function of writing in this context I feel more able to achieve my goals. Although not being able to understand a lot of legal jargon, I feel like I would be able to learn it and write it effectively. A lot of my research had many examples of poor legal writing, and

suggestion of how to write better. Taking that with me before going to law school will be an important tool to writing effectively.

My attitude is pretty optimistic towards the career and writing in the career. I still want to study law, even though my understanding of legal writing has been lead to know that there are many parts to the writing that are unfavorable. For example using jargon to communicate to clients is a common legal practice that seems peculiar. I want to study corporate law, which is even more technical than typical legal writing. I believe that once I know how to write legally well then I will be able to use the writing skills I have learned in research to my and my client's advantage.

The analysis of the *findings of fact* documents and legal writing as a whole has lead me to see why legal writing can seem so technical, and have such a professional feel. There are many aspects to why documents are written the way they are, and understanding some concepts of the community help understand this. A lot of it is for the interest of the legal community, and much of it is an unspoken desire to conform to the practices of the community. It is a difficult balance to be both original and have personal style, and yet adhere to the communities practices. Each form developed has a genre of its own and as such official, and unspoken writing regulations of the genre are transposed in the document. Legal writing is important to achieve the legal work that helps maintain our society, and the rhetoric behind it helps understand what the documents are written the way they are.

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