1-1-1964

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THE TECHNIQUE OF WRITING EXAMINATIONS

by Robert Littler*

To write not to be understood is no less vain than to speake not to be heard. —Samuel Butler

The argument put strongly is not the same thing as the argument put feebly. —Mr. Justice Cardozo

When you take the California Bar Examination you will be tested on fifteen subjects. Actually, you may not have to write on all fifteen subjects because in five of the six sessions of examination writing you will have the right to elect not to answer one question out of five; and you may thus "option out" a whole subject.

But in every answer you write you will be judged on another subject: your ability to write. This is not to say that the Bar Examination is intentionally a test in English. It is to say that the Readers are influenced by your ability to write because it cannot be otherwise. Later on I shall tell you more about our grading system so you can guide yourself accordingly. Here, it is sufficient to say that the complete Examination consists of twenty-nine questions. Of these you will be required to answer twenty-four. We have one Reader for each question. In the Bar Examination of August 1963, we examined 1,536 applicants. The four questions of the first Examination session are mandatory. So the Readers for these four will have to read and judge 1,536 answers. The other Readers will probably have to read fewer answers, depending upon the number of applicants who elect not to answer the particular question assigned to the Reader.

All that the Reader will know about you is what you write to him in your answer. To insure anonymity we use a double-numbered system of coding. To the Reader you are a faceless person. He will not know whether you are male or female, tall or short, slim or fat, white or colored, whether you are a graduate of a great and famous institution of legal education or whether you studied in a lawyer's office. He must make up his mind concerning your knowledge of the law and your ability in legal reasoning solely from what you write to him.

If you do not know the law or cannot reason well, good writing will not help you. If you do know the law and can reason well, bad

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1 Community Property; Constitutional Law; Conflict of Laws; Contracts; Corporations; Criminal Law; Equity; Evidence; Pleading; Real Property; Sales; Taxation (Federal Estate and Gift, BUT NOT Federal Income); Torts; Trusts; Wills and Succession. Subjects may be changed, but only on adequate notice.

writing may hurt you. If you are moderately good, good writing will help you get a better grade than you would otherwise receive. Fair or unfair, these are the facts of life and no one can change them.

Personally, I see no unfairness in your being judged in part by your writing skill. Writing is part of the craft of the working lawyer. Words and sentences are his chief tools. He writes contracts, wills, briefs, opinions—and sometimes law review articles about legal writing. Altogether too few lawyers are skillful writers; but within the past decade and a half there has been a considerable upsurge of interest in the improvement of legal writing generally. Many law schools now have courses in legal writing. How good they are I do not purport to say. That it can be well taught is obvious. Several government departments have established divisions to assist in improving governmental English and have published manuals on the subject. While these are not exclusively concerned with public legal writing, they are mainly concerned with it. There have been some excellent books recently published on legal writing. They say over and over again that lawyers are judged in part by their writing. So why not law students?

Writing is a skill or a craft. It cannot be learned by study alone. It is a bit like playing the piano and playing football. If we learn it at all, we learn it by practice and by trial and criticism. There are no fixed rules; at least I know of none that cannot be successfully

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2 There is one opinion-writing contest sponsored each year by the Section on Personal Finance Law of the American Bar Association and an organization of lawyers who call themselves SCRIBES. SCRIBES is a group of legal writers interested in improving legal writing—their own as well as others. In this contest the prizes are considerable, and it is open to all law students in the United States. Strangely, it has never attracted much attention on the Pacific Coast. Over the years at least two-thirds of the prizes have been won by students from Seton Hall School of Law and about one-fourth of the prizes by students from Dickinson School of Law. Students from the major law schools are not often in the running, although a student from Michigan did win a prize in 1963. This indicates to me that Seton Hall and Dickinson are doing an infinitely better job of teaching legal writing than most of the law schools. Just how they do it I do not know.

3 I have examined some of the Manuals put out by the Department of Health, Education and Welfare, by the Navy Department, by the Judge Advocate's Department of the Air Force, and by the Internal Revenue Service. They are all very good. How much effect they have had is hard to say. At least the one by the Internal Revenue Service seems to have had no discernible effect on tax writing by government lawyers in that Service for the Service is still bound up in multiclausal complexity and polysyllabic obsfuscation.

4 COOPER, WRITING IN LAW PRACTICE (1963); WEIHOFEN, LEGAL WRITING STYLE (1961); ADVOCACY AND THE KING'S ENGLISH (Rossman ed. 1960). If you want something much more brief but not so recent, you might take a look at LEITLIE, READER RIGHTS IN LEGAL WRITING, 25 CAL. S.B.J. 51. Although this was originally published in 1950, the State Bar has recently reprinted several thousand copies, and copies are available from the office of the State Bar in San Francisco, see also MELLINKOFF, THE LANGUAGE OF THE LAW (1963).
violated. There are certain principles on which all writers agree. It is to these I shall turn in a moment.

Every job of writing has a technique of its own. This is conditioned by the particular task or objective of the writer at the particular time. This is true of writing novels, or plays, or briefs, or opinions. It is also true of writing examination answers. That this has not received more attention surprises me somewhat. We never merely write. Writing as writing is useless. We write to someone. What we say and how we say it is wholly determined by the reader or the class of readers. If you are writing an examination in law school you are writing to a single professor, or to a reader of his who will take directions from him on how to grade the papers. Every law professor has his own preferences, idiosyncrasies, or perhaps even prejudices. When I was teaching law I was no exception to the run of the breed. By the time you have had a course from a teacher you should know what he wants. When I was in law school I had one teacher who expected us to touch upon every possible subject suggested by the question. I had another who would dock us ten points for a single irrelevant sentence. I wrote accordingly.

Your problem in the Bar Examination is different. Our system of grading is as impersonal as our ingenuity can devise. Nevertheless, each answer you write will, in the first instance at least, be judged by one person—the Reader—under detailed instructions which result from the collective judgment of at least eighteen persons. It should help you to know exactly how this system operates.

When the Examination is over, the staff of the Committee of Bar Examiners selects at random the answers of seventy-five applicants. We try to get about half from the San Francisco sessions and half from the Los Angeles sessions. This is the only conscious choice in the procedure; the rest is pure chance. The answers then are classified by question and all the answers to a particular question are sent to the Reader who is to be responsible for that question. He first prepares for himself and for the Committee a memorandum on the law involved in the question. This is not in the form of a model answer. In many states, and in England both for the Bar Examination and the Qualifying Examination for Solicitors, the Readers prepare model answers. We do not. The Reader then reads the answers and assigns tentative grades to all of the answers to his question. When he is through he returns to the State Bar office five answers: two

However, see Hook, How To Take Examinations In College (1958); Wrenn & Larson, Studying Effectively (1962); Wrenn, Practical Study Aids (1965); Kinyon, How To Study Law and Write Law Examinations (1961); and How To Pass Law School Admission Test (Brooklyn College Publishing Corp. 1963); Gruber, How To Score High On The Law School Admission Test (1962).
which he considers particularly good, two which he considers just passing, and one which he considers a failure.

At the same time he submits to the State Bar office his written comments on the question based on his experience with the answers he has read, and his comments on the answers. These comments are in specific answer to a set of standard questions which are as follows:

1. Did you consider this a fair question? An easy question?

2. Were there any ambiguities in the wording of the question which misled the applicants? If so, what percentage of the applicants were misled and how?

3. Of the basic issues treated in your analysis or the draftsman's analysis of the question, were any overlooked or inadequately treated by any substantial percentage of the applicants? If so, what issues were overlooked? By what percentage of the applicants? What issues were improperly treated and how? By what percentage of the applicants?

4. Other than the basic issues treated in your analysis or the draftsman's analysis of the question, were other issues raised by any substantial percentage of the applicants? If so, what were the issues? By approximately what percentage of the applicants were these issues raised and discussed? How did you treat them in your grading?

5. Does the question present any unusual grading problems? If so, what are those problems?

6. If you consider the grading unusually high or low, or unusual in any respect, to what do you attribute it?

7. Have you any other comments or suggestions other than those you have discussed above?

Simultaneously, we have been pursuing another investigation which will influence the grading procedure. As soon as the Examination is over, copies of the questions are sent to all the accredited law schools in California. We request that the professors who teach the subject involved in each question give us their comments on the question. In effect, we solicit from the professors their opinions on: (1) whether the question is too easy, too hard, or about right; (2) whether anything about the question is obscure or misleading; and (3) what they would expect of their students in answer to the question.
The next step is for each member of the Committee of Bar Examiners to prepare to lead the discussion on the question within the subjects assigned to him. To each member of the Committee there are assigned two or three subjects for which he is primarily responsible. The net result is that each member is responsible for four or five questions. The subjects assigned to me are Evidence and Sales; and I shall tell you exactly what I do and how I do it. This is not to say that I do anything different from what the other members do. We all do about the same things; we have to. But I think it will be clearer if I now shift again to the first person singular and ask you figuratively to sit beside me throughout the rest of the procedures.

When I start to work on a question I have before me the following:

(1) The original draft of the question, together with my notes of any changes in the question made by the Committee or its staff before the question is used in an actual Examination; (This is not the time or the place to describe the procedures of deciding on the questions to be used. It is sufficient to say that our questions are all drafted by professors in law schools located outside of California. Frequently the questions are modified by the Committee. Invariably, the purpose of the modification is either to clarify the question or to simplify it.)

(2) The analysis on the law prepared by the draftsman of the question;

(3) The analysis on the law prepared by the Reader who will be in charge of the question; (When the Reader prepares his analysis he has not seen the one prepared by the draftsman. It is an independent job.)

(4) The comments of the Reader on the question and the answers he has read;

(5) The comments from the law professors in the California schools; and

(6) The five answers which have been selected for me by the Reader.

I then read the five answers selected for me. I grade them. At that time I do not know what grades have been tentatively assigned to them by the Reader. Later on, if I find that the Reader and I differ substantially in our judgment of an answer I reread it to find why we differ. Usually the reason is obvious. I prepare to raise the question at a meeting of the Committee which I shall soon describe. The Reader is expected to argue his point of view and I shall argue
mine. The Committee then decides. Sometimes I win the argument; sometimes I do not.

But I am a bit ahead of myself. The final step in my homework is to prepare an outline of what I think should be required in a reasonably good answer—based on all the analyses and the comments I have before me. I may also note what we call a "bonus point." This is a point of law which may prove to be only obscurely involved in the question, or a particularly difficult point of law. It is one which we do not expect to be discussed in the average answer. Indeed, in theory, at least, you may get a grade of 100 for the answer without discussing the point; but if you do see it and discuss it well, you will get five or ten points above what you would otherwise get—subject only to the limitation that no one gets more than 100 for any one answer.

Then the Committee meets to give the Readers their final instructions as to how to grade the answers. At this meeting there are present the following:

(1) The seven members of the Committee;

(2) The Secretary of the Committee; and the Legal Assistant to the Committee;

(3) The Deans of three accredited law schools in California, or, if they cannot be present, a member of their respective faculties whom they have appointed to represent them; and

(4) The five reappraisers.

Every applicant whose average grade falls between 65 and 70 (total points for the 24 questions between 1560 and 1680) has his entire set of answers read by two Reappraisers. If they both agree that he should pass or should fail, that ends it. If they do not agree, the entire set of answers is read by a third Reappraiser; and his vote is final. Until 1963 we had only three Reappraisers; but the work became so burdensome that we increased the number to five. But the increase in number did not change the system.

We meet with the 29 Readers in succession. The agenda allots a half hour to each Reader and for each question. Of course, on any doubtful point to be resolved, legally only the votes of the Committee actually count. In practice, everyone present is expected to express his opinion, including the Reader. What happens is that the Chairman calls on everyone present; and everyone present is expected to cast his own individual vote.

The discussion of each question and the answers to be expected is always led by the member of the Committee who is in charge. I
suppose it would not help you to describe the discussion in detail. Sometimes there are no problems. Sometimes there are. The result, as I said before, is a consensus judgment as to how the Reader should grade the question—a consensus judgment of eighteen people: seven members of the Committee; our Secretary and Legal Assistant; three Deans; five Reappraisers; and the Reader himself.

The Readers are all practicing attorneys. Of the present Readers the youngest is twenty-nine and the oldest forty-eight. The typical Reader is probably about thirty-five. They were trained in all types of accredited law schools. Some are affiliated with large law firms, some with small law firms, some practice solo, some are in government employ, and some are corporate counsel. Each can expect that this job of reading will occupy every evening and every Saturday and Sunday for at least two months.

We do not publish the names of the Readers and Reappraisers and for one reason only. This is to protect them from the verbal assaults of disgruntled applicants who do not make the grade. We try to make the job as easy for them as we can. So should you; and to that problem I now turn.

I said at the outset that you never merely write, you write to someone. From what I have said, it will be apparent that in writing examination answers you are not writing to known individuals. In this respect it is somewhat like writing a law review article. The writer may not know the individuals who read the law review, but he does know pretty well what type of people they are. The principal class of people to whom you will be writing are the Readers. I have described them for you. I have described the conditions under which they work. It might help if, in connection with your writing, you would conjure up in your imagination what they must look like and how they must work; and then write to those persons and to those conditions.

Imagine that you are the Reader. Your task may be to read 1500 answers to the same question. Assume that you average only ten minutes to the answer. Of course, you will have to spend more time than this on most of the answers, but let us assume ten minutes for ease of computation. That is 250 hours of reading answers to the same question. I doubt that you could work at this drudgery more than about six hours a day. Beyond that your mind would freeze; you could not sustain your attention; you would be reading nothing but words and no meaning would come through. So your job will require the equivalent of about forty full working days.

In the midst of the dreary monotony of this repetitious task you come upon an answer from which I am about to quote. The ques-
tion is one in Evidence and very clearly involves certain exceptions to the hearsay rule. You need not know the details of the question to understand the frustration of the Reader. Who wrote it I have no idea. Whether or not he passed the examination I do not know. Here is part of the answer:

For an item at evidence to be admitted into evidence at a trial must be material, relevant and competent.

Was Item material materiality is concerned with whether the evidence relates to any issue in the trial.

Here the item was introduced to show knowledge of dispatcher prior to accident and storm of the storm.

This writer feels that was material

Was the Item Relevant Relevancy goes to show that the item proves that for which has been introduced to prove —Also that proves that for which was introduced without too much time wasting and prejudice to the defendant. Here the item introduced to show that the Defendant had knowledge of the storm prior to the accident—

This writer feels that the evidence is material and relevant and should be admitted over those objections.

Is the evidence competent competent evidence is reliable evidence which is gathered by first hand knowledge of subject.

Is the statement hearsay

Hearsay is an extra Judicial act or words which puts into issue the Testimonial qualities of an absent declarant—The Qualities are perception recollection, narration and sincerity. If any one of the qualities are in issue the its hearsay and is excluded as being unreliable because its second hand knowledge—

I think that is enough. The remainder of the answer was of about the same quality.

How would you read and judge that answer? As a conscientious Reader you would probably stop at the end of what seems to be the fourth or fifth sentence and shut your eyes and hold your head in despair. Then you would go back and reread the beginning of it and try to dig some meaning out of it. Finally, you would probably conclude that, giving the applicant every conceivable benefit of the doubt, the best you can say is that the answer is so abominably written that you cannot believe the author could be a competent lawyer. Let us see what is wrong.
The writer has spelled the work “competent” as “compotent.” It seems strange that a law student would misspell a word which is so commonly used in so many branches of the law. There is little punctuation. Punctuation is intended to assist the reading process and it is to writing what inflection is to speech. Without it, writing is hard to read. Capital letters are scattered throughout the writing as though they were shaken out of a saltcellar. The writer has misused the word “feels.” The word “feel” commonly refers to an emotional reaction. What the writer meant was “is of the opinion.” Although it is not apparent from the excerpt quoted above, the truth is that the writer misstated some of the facts in the question. The writer refers to the item which “has been introduced.” The question stated that the evidence was not introduced; it was rejected. The brief mention of the relevance of the evidence was itself irrelevant. The evidence offered was obviously relevant and the only question was whether it was admissible in the form in which it was offered. The writer misuses the word “testimonial.” Possibly, he means “evidentiary.” At your leisure you can add to this collection of mistakes which obfuscate the Reader.

So the first element in the technique of writing examination answers is to write clearly. Writing that cannot be understood is ineffective. Writing that cannot be understood easily is inefficient. The Reader simply does not have the time to wrestle with you about the meaning of your words. Anything you can do to make his job easier will profit you in grade points; and the same will be true when you write briefs to judges. For obviously you are going to make a much better impression on Readers, and later on judges, if you handle legal points efficiently, clearly, and competently.

The principles of clarity in legal writing are not much different from the principles of clarity in any non-fiction writing. There are many good books on the subject. One of the most popular is The Elements of Style by William Strunk, Jr., with revisions by E. B. White. This was originally privately published for the use of Professor Strunk in his English composition classes at Cornell. A few years ago it was reprinted for general circulation. The writings of Sir Ernest Gowers are very good. His original work was a handbook he prepared on writing for the British Treasury. He has reworked and added to his material in at least two more books. The one most easily available is Plain Words, Their ABC. The teacher I prefer is Dr. Rudolph Flesch. He has written several books, but the one I recommend is one of his older works, The Art of Readable

(1959).
(1954).
Writing. His work is somewhat unique in that he has based it upon scientific studies, by psychologists, of the reading habits of people. He contrived a readability chart by the use of which a writer can gauge the probable clarity of a given piece of writing to the class or type of readers to which it is addressed.

All three books are quite short. Appropriately enough, they are easy to read. Particularly Sir Ernest and Dr. Flesch write with wit as well as wisdom and some passages in both books are quite funny. You can read all three of the books in four or five hours. I recommend that you do so. If you heed what you read the clarity of your writing should improve by at least one-third. I commend this as a profitable expenditure of time. This is not the place, nor do I have the space, to summarize what they say about the principles of clear writing. One suggestion must suffice.

"Keep your sentences short." So says Sir Ernest. "This will help both you to think clearly and your correspondent to take your meaning." He then gives an example of a long, rambling sentence and comments, "The reader is never quite sure until he has read further whether any of these statements has been completed, and he probably has not taken any of them in when he has finished. He re-reads the sentence and picks up the statements one by one. If they had been separated by full-stops and the ands omitted, he would have grasped each at first reading. The full stops would have seemed to say to him: 'Have you got that? Very well; now I'll tell you something else.'"

"No, there is no rule," says Dr. Flesch, "but there are scientific facts. Sentence length has been measured and tested. We know today what average Americans read with ease, and what sentence length will fit an audience with a given reading skill. So you get not a rule but a set of standards." 

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8 (1949). In Reader Rights in Legal Writing, supra, note 4, I attempted to adapt the ideas of Dr. Flesch to the uses of legal writing. Probably the best known book written by Dr. Flesch is WHY JOHNNY CAN'T READ, AND WHAT YOU CAN DO ABOUT IT, (1955). It does seem to have had a considerable influence in the teaching of reading in our public schools. Dr. Flesch first came to prominence when he was retained by the Office of Price Administration during World War II to help revise some of the Regulations of that agency. He first attempted to revise an old OPA Regulation on eggs, in which he found this definition: "Ultimate consumer means a person or group of persons, generally constituting a domestic household, who purchase eggs generally at the individual stores of retailers or purchase and receive deliveries of eggs at the place of abode of the individual or domestic household from producers or retail route sellers and who use such eggs for their consumption of food." He revised this gem to read: "Ultimate consumers are people who buy eggs and eat them."

9 PLAIN WORDS 17 (1948).

10 THE ART OF PLAIN TALK 38 (1946).
If the average length of your sentences is under 20 words, this should contribute to the clarity of your writing.

To the specific problem of writing examination answers I now turn. Different persons work differently. No matter what the problem of writing is, no two writers follow exactly the same technique. However, you may care to consider some of the suggestions which I shall now make.

Of course, I assume that if you are writing the examination with pen and ink you will make your handwriting as legible as possible. If the Reader cannot read any portion of your answer you have wasted your time writing it. At our grading meetings of the Committee we sometimes call upon the Reader to read to us some answers which may raise grading problems that we must resolve. I am distressed at the number of times that the Reader will come to a dead stop, will study the handwriting carefully, and will then look up and say, “I can't read it.”

If you happen to be cursed with bad handwriting, you have all my sympathy. So am I. When I was a sophomore in college one of my teachers told me that my handwriting was so bad that he had difficulty reading my themes and my answers in examinations. He suggested that I learn to type. I did, and I judge that it materially improved my grades. In my sophomore year my grade average was between a B— and a C+. In my senior year my grade average was almost a straight A. My Phi Beta Kappa key, which I seldom wear, I attribute as much to my typewriting as to my learning.

If your handwriting is bad and if you have time to do so, I suggest that you learn to typewrite. If time does not allow, then take every precaution to write as well as you can. A short but adequate answer which can be read will get you a better grade than a longer and better answer which cannot be read.

I assume that you will be careful of spelling and punctuation. Punctuation helps the Reader. If you cannot spell correctly commonly used legal words and phrases, the Reader will be inclined to doubt that you know their meanings. I know one experienced lawyer who moved to another state and took the attorney’s examination. He told me that he always had difficulty with spelling, so in preparing for the examination he made a list of the words he commonly misspelled. Then he read the list before each session of the examination.

It is important that you answer every question that you are required to answer. Four passing answers at a given session will earn you a higher grade than three superior ones and a blank. We know
that you will be working against time. Nearly all lawyers have to do that throughout their practice. If time runs out on you, you need not tell the Reader. He will know it. If you organize your work properly, time will not run out on you.

Therefore, allocate your time. In a few moments I will make a specific suggestion as to how to do it. You will be required to answer four questions in each 3½ hour period. Allow at least 15 minutes at the end of the session to reread your answers and to make any necessary corrections.

At the outset of the session, read all of the questions. In an examination in law school this is particularly important. Your instructor will rarely have two questions on the same specific subject. So if you find that a problem is incidentally involved in question 2 and principally involved in question 8, you can save your time on question 2 and give the full discussion on question 8.

This is not always true in a bar examination. It would take too long to explain why; but sometimes we do have more than one question involving the same or similar problems. However, in all examination sessions, except the first, you are only required to answer 4 out of 5 questions. Therefore, you should at the outset read them all and at least make a tentative decision as to which one you will "option out." I do suggest that once you have decided which question not to answer; you then forget it and stop worrying about it.

Answer first the question which appears the easiest for you. You can probably answer it more quickly and you will gain confidence as you go along.

When you begin your work on the specific question, be sure that you read it carefully and know exactly what we are asking. Answer the question you are asked. Do not give us a general lecture on the subject matter. All of our questions are within one of the fifteen announced subjects in the examination. The questions do not overlap. So if you find a question which is principally concerned with contracts and may incidentally involve some question in tort law, you may properly mention this fact, but do not waste a lot of time on a discourse on the incidental tort problem.

Our questions are not subtle. As clearly as our command of the English language permits we attempt to tell you exactly what we want. Do not look under the sentences for hidden meanings. They are not there; or, if they are there, then a mistake has been made by the draftsman of the question, by our Secretary, by our Legal Assistant, and by seven members of the Committee. We instruct the Reader to grade accordingly.
When you start to prepare your answer, think and organize it before you start writing. Good organization is a great help to the Reader and it indicates to him that you know your business. The purpose of good organization is to be sure that you take up your ideas in the order in which they can most easily be understood, and also that all of your ideas on one specific point will be in one place and you will not have to repeat yourself. I always found it helpful to outline my answer before I started writing it. I would suggest that you spend about 40% of your time in organizing your answer and the rest in writing it.

I suggested a moment ago that you allocate your time. It might be a good idea to prepare a time schedule in advance so you can check your progress by a glance instead of having to calculate your time. You will have to allow at least 15 minutes at the outset to read through all the questions and make your tentative decision as to which one you will not answer. I suggest the following as a workable schedule for a morning session:

8:30 Read the questions
8:45 Study the first question you are going to answer and outline the answer
9:05 Start writing
9:30 Study the second question and outline the answer
9:50 Start writing
10:15 Study the third question and outline the answer
10:35 Start writing
11:00 Study fourth question and outline the answer
11:20 Start writing
11:45 Reread all the answers and make necessary corrections

When you actually start writing the answers, I suggest that you put your conclusion at the beginning of the answer. Or, if your question involves three or four separate but related problems, put your conclusion at the beginning of your discussion of each problem. If you outline your answer this should not be difficult. If you find it difficult, then leave three lines and insert your conclusion later. It is a great help to the Reader to know your conclusion first. That helps him judge your arguments and your discussion. However, your conclusion is of far less importance than your reasoning.

How long should the answer be? There is no rule. By the time you get to the bar examination you should have enough experience to know what you can write well within the limitations of your
time. A short, well-written answer is far better than a long one written hastily.

About this business of taking the bar examination, there seem to have developed certain myths which are apparently passed on from one generation of law students to another. One of these myths is that by a certain process of reasoning—which I cannot understand—some people think they can predict the precise questions of the next examination. Mine is one of seven votes which will decide what questions are in the examination. I cannot make such a prediction and I doubt whether anyone else can. The fact that a particular topic was the subject of a question at the last examination and the one before that and the one before that does not indicate whether the same topic will or will not be the subject of a question in the next examination. A mathematician once told me that two types of systems have been developed to beat the game of roulette. One is based on the assumption that if a number has been regularly coming up it will continue to come up. The other is based on the assumption that if a number has been regularly coming up it will not continue to come up. Actually, the odds are the same on every turn of the wheel. The same is true of the bar examination.

Another myth is that the Readers look for a certain type of what we call a “formula answer.” The first time I encountered this was in connection with the first examination I worked on after I became a Committee member. The question was in Evidence. It involved exceptions to the hearsay rule. The first sample answer I read began by stating that for evidence to be admissible it must be relevant. Then it went on to state that Wigmore and Morgan had different theories as to what was hearsay. Now the subject of relevance was not involved in any way. I thought it was a sign of incompetence of the student to discuss it. The theories of hearsay had nothing to do with the question. Then I found the same formula in the second paper, and then the third paper. By the time I had read the fourth one I was ready to throw the answer into the wastebasket. Readers react the same way. One of them told me that by the time he had read the tenth crude formula answer he had to exert a conscious exercise of will power to avoid being totally prejudiced against the rest of the answer. A formula is all right—provided you do not use it. If you think you need a memory crutch, then use it as a mental checklist, but do not burden the Reader with it.

There are more specific hazards in writing formula answers. In the August, 1963 examination we had one question in Evidence which had four parts. The first involved refreshing the recollection of a witness by means of a memorandum previously prepared. I
picked up one answer in which the applicant started out by telling me that to be admissible, evidence must be relevant. That is something like commencing an answer to a question on advanced calculus by stating that two and two equal four. Then he went on to discuss logical relevance, legal relevance, materiality, and hearsay. At about that point I began to skip ahead to see if I could find something he had written for which I could give him some grade points.

In answer to the second part, he repeated the formula a little more briefly. The answers to the third and fourth parts of the question were excellent. So I went back and reread his answers to the first and second parts. I found that in this mess of words on relevance and materiality he had imbedded some fair discussion of the problem involved in the first part.

On reflection, it seemed to me obvious what had happened. After the applicant had regurgitated the formula which he had ingested somewhere, he wrote very well on the last two points. If his answers on the first two points had been equally good he would probably have received a grade of 85 or 90 for the question. Actually, his grade was 70. Writing the formula cost him 15 to 20 points.

Concerning another question on Evidence, we had a comment from the Reader that it was an easy question. We received comments from five law professors who teach Evidence. These comments ranged from "fair but on the easy side" to "too easy for a bar examination." In answer to our standard question to the Reader as to whether grades were running unusually high or unusually low in the test run, the Reader commented that the grades were running unusually low. He attributed this to the fact that at least one-third of the students spent too much time discussing hearsay and too little time answering the question. Hearsay was only remotely involved in one of four parts to the question.

Do not waste your time on formula answers which have nothing to do with the question. You are working against time. Every minute you waste on a formula answer will necessarily reduce the quality of your answer to the questions. We cannot give you grade points for formula answers. We can only give you grade points for answers to the questions.

When you attend your first California Bar Examination session you will find that on the first page of the set of printed questions there are official instructions from the Committee. Included within those instructions are these admonitions: "Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them. . . . Although your answer should be complete,
you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.” If anyone advises you otherwise, then run—do not walk—to the nearest exit.

Still another, though less important, myth is that you should never write in the first person singular. Nonsense. We do not care whether you write in the first person or the third person, so long as you write well. If you have read this essay this far you may have noticed that sometimes I write in the first and sometimes in the third person. I write in the fashion which is easier for me to write and, I hope, easier for you to read. “Go thou and do likewise.”

Close your ears to rumors, especially from other students and from students who have taken earlier examinations. If you want to know something about the bar examination, talk to the Dean of your law school or ask the offices of the Committee either in Los Angeles or in San Francisco. Their addresses are: 1230 West Third Street, Los Angeles 17, and 601 McAllister Street, Suite 200, San Francisco 2.

The general style of answers we expect from you is the same style you have been using in law school. If you think you need practice with actual bar examination questions you can buy copies of prior examinations at our offices at a nominal price.

We all know that taking the bar examination involves a certain amount of nervous strain. Any “performer” is subject to a certain amount of nervous strain. By performer I mean someone who must put forth his best effort at one time with little or no opportunity for a second chance. This includes lawyers trying a case in court, after-dinner speakers, singers, actors, and athletes. A sports press report of August 5, 1963, gives an account of Mickey Mantle being called upon to pinch-hit after some weeks out of the lineup because of injuries. His teammates said that as he left the dugout his face was white and drawn and that his hands shook as he selected a bat. Then he went to the batter’s box and hit a home run. With all his thousands of times at bat, if Mickey Mantle became nervous when he was called back into the lineup, I suppose you can expect to be nervous before the bar examination. Most performers feel that their work is probably improved by a certain amount of nervousness in advance. Psychiatrists and doctors have told me that there are psychological and medical reasons for this.

However, there are some people who freeze under the apprehension of anticipation. We fear that some fail the bar examination because of this. We do not know what we can do about it. If you turn
out to be one of those unfortunate ones, perhaps it would be to your advantage to find out about it as soon as possible. However frightened you may be before the bar examination, you will be twice as frightened the first time you stand up in court.

Lloyd Paul Stryker was a famous and successful trial lawyer in New York. He wrote several fine books and one of them is The Art of Advocacy. Early in the book he describes how a lawyer feels as he completes his preparation for the beginning of an important trial. "Tired from your long labors, there may come upon you in your weaker moments misgivings, and a depression that breeds fear. But you have assumed the task; you have put your hand to the plow and you intend to follow the long furrow to the end. Only stupid unimaginative men have not experienced fear...." (27)

Bear in mind that Stryker wrote this in his mature years after he had tried perhaps a thousand cases. Periodically in your practice you will probably be subject to equal pressures. This is as true of the business lawyer as of the trial lawyer.

There are some things you can do and not do to minimize the pressure. Do not allow yourself to be worried if someone gets up and turns in his paper before you have finished. Probably he has not done very well. Certainly, he has not done as well as he could, for he has not used up all his time. Avoid "post-mortems" after each session of the examination. All you will do is worry yourself as to whether you included everything the other students are talking about. You have done your best. Go home and forget it.

Be sure to arrive at the examination room well in advance of the time required. See the physical surroundings. Get a chance to sit down before you have to go to work. All the good trial lawyers do this at the beginning of a trial, even in a familiar courtroom.

We also know that our examination is a physical strain. It is hard, physical work to write seven hours a day for three days in succession. Even professional writers working in the tranquility of their own studies seldom attempt to write more than four hours a day. So do a little training for the examination. I suggest that you not continue your "cramming" down to midnight the night before the first session. Do not go home from a session and start studying for the next. Stop your reviewing two days in advance of the examination. Take your girl to the movies. Play tennis or golf. Do anything to get your mind off the subject of law, and particularly the law examination. Feel as well as you can. A fresh mind is infinitely better than two more hours of review.

11 (1954).
You will understand that in what I have said I speak for myself alone. I have not consulted with the other members of the Committee; but I have no reason to suppose that they would dissent. Indeed, except for what I have written specifically concerning the California bar examination, none of my suggestions is the consequence of any experience of mine on the Committee of Bar Examiners. Most of these suggestions arose from my own experience as a law teacher. I became distressed at the poor answers I was getting in response to my examination questions, and I prepared a lecture to help the students get better grades in my own examinations. I have no monopoly on the suggestions that I have written. If you care to consult the sources that I have cited above, you will find the same advice oft repeated.12

There will be some readers of this essay who will become agitated about the importance I place on writing skill. They will think that a lawyer or a law student should not be judged at all by the quality of his writing. Perhaps they are right; but the fact is that neither law students nor lawyers can escape being judged, in part, on their writing. A large part of their work is communication in writing. I am not putting a monkey on your shoulder. What I do is to point out that it is already there.

And now to all of you I wish all good fortune in the bar examination.

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12 Should you care to read an eloquent exposition of the theme that good style augments the effect of good thinking, go to the general library and find the collected words of Woodrow Wilson. There are several editions. Find one of his early essays entitled “An Old Master.” It was first published in 1893. Look for a paragraph in the essay which begins with the following sentence: “Adam Smith took strong hold upon his hearers, as he still takes strong hold upon his readers, by force, partly, of his native sagacity, but by virtue, principally, of his consummate style.” The last sentence of the paragraph is: “He did not put his candle under a bushel, but in a candlestick.” When you have time, read Lincoln’s “Cooper Union Address.” This was an argument in the field of constitutional law and history. It is a near-perfect example of clear exposition of a complicated subject.