

What Have the Muses Got to Do with Legal Writing?

George D. Gopen, Professor Emeritus of the Practice of Rhetoric at Duke University

This is the 31st in my series of these essays for *Litigation*, stretching back to 2011. I am announcing a change of focus. The first 30 dealt with how to achieve clarity in prose by understanding where readers expect to find certain kinds of information in an English sentence. Mastering these reader expectations allows you better to control (1) your writing process, (2) the reader's interpretive process, and (3) your re-engagement with your thinking process as a result of the act of writing. Once you have clarified your intended communication, what more could you strive for? You could strive for elegance.

Elegance? But we are speaking of *legal* writing here. We are not dealing with the novel, nor with literary non-fiction. Surely *elegance* belongs to former centuries, from which we have been trying so hard to escape, yes? No. Elegance for the sake of elegance indeed does belong to an earlier era; but elegance that quietly, subtly, and unobtrusively helps to guide the reader from sentence to sentence and throughout the journey in a paragraph plays an important role. I am speaking of the elegance that comes not from fancy word selection but rather from the organization of the forward flow in prose via sound, the skillful use of figures of speech, and, above all, rhythm. We all respond to these influences as readers without ever consciously noting their presence.

It will become possible to understand these influences if we look closely at prose generally considered to be “great” – prose that has lasted in memory. I will be looking at its music. I will be making a case for that music being able to help our readers be *persuaded* of the

accuracy, the power, and even the truth of what is being said.

Aristotle taught us that there are three distinct modes of persuasion: *logos*; *pathos*; and *ethos*. We are persuaded by prose that sets out the *logic* of the matter, fact after fact, cogently arranged and connected by ideas; we are persuaded by *pathos*, the appeal to our emotions, even if there is no context built on logic; and, when we cannot judge either of those, we can be persuaded by the *ethos* – the ethical standing of the speaker/writer, who urges us to believe what is said primarily or solely on the basis of who it is that is saying it.

Aristotle was right. However, I am going to be bold enough to add to his list a fourth mode. I will call it *Musikos*. We can be persuaded by prose that with ease and grace leads us forward to value some words or some ideas more than others; we are persuaded because we arrive at our perception of the ideas with such ease, grace, and power. Not in place of, but in addition to the logic, the emotion, and the ethicality of the source, the music matters.

The most concise and recognizable example that comes to my mind is neither a legal nor a political one, but one dealing with the raising of one's spirits – the King James version of the 23rd Psalm. I have devised a method of demonstrating the rhythm of prose that I call *colometrics*. (I've borrowed the term from Biblical exegesis, but I use it differently.) First I separate a text into lines, as if it were a poem. Then I separate each line horizontally into sub-units that each represent one "beat" of prose rhythm. You can thus easily see how many beats I am assigning to each line; you can also see if that line uses the same number of beats as its predecessor or not. Variety is one of the main ingredients of art. If the rhythm changes *for a reason*, and that reason has something to do with the meaning and purpose of the prose, then the resulting *musikos* becomes an important part of

how the text affects its audience.

Here follows a colometric of the 23rd Psalm that makes rhythmical sense to me. I could easily fill three or four of these *Litigation* essays with an analysis of the myriad effects of sound, rhythm, and rhetorical figures here. I'll just suggest some of the highlights. You would do well first to read the Psalm aloud from the colometric, with one beat assigned to each separate horizontal phrase.

The Lord is my shepherd; I shall not want.
He maketh me to lie down in green pastures;
He leadeth me beside the still waters;

He restoreth my soul.

He leadeth me in the paths of righteousness
for his name's sake.

Yea, though I walk through the valley of the shadow of death,

I will fear no evil, for Thou art with me:

Thy rod and thy staff they comfort me.

Thou preparest a table before me in the presence of mine enemies:

thou annointest my head with oil;

my cup runneth over.

Surely goodness and mercy

shall follow me all the days of my life;

and I will dwell in the house of the Lord forever.

Now please: I know this is not the only way to arrange these lines. Two weeks from tomorrow I may well change my mind about a detail, here or there. But this colometric is one convincing possibility; and it allows us not only to learn things about how to balance the various materials but also how to perform it orally in an elegant way. It also represents the music of its presentation learned by most children. The colometric is the visual rendition of the psalm's song.

Throughout the history of English prose, 4 beats is more often used as a starting and ending place than any other length line. It feels like a safe home, from which we might wander, but to which we like to return. It is also sub-divisible into two 2s that can balance each other. That happens in the first line: 4 beats subdivided into two 2s. (As a child, I often wondered why I should not want the Lord to be my shepherd; but I pass that by. I do not mention it.) This line is also aided by a reversal of sound elements: In the second and third beats, the “sh” sound makes itself prominent; and in the first and fourth beats, the vowels are close in sound, and the “d” and the “t” talk to each other, being the voiced and unvoiced versions of the same sound. (Try to say “d” without voice, and you’ve said “t.”)

To establish a line rhythm, it is often best to repeat the same number of beats for another line or two. That happens in the second and third lines. The regular 4-beat progression suits well the parallel structure of the grammar: “He maketh me ...”; “he leadeth me”

But then we have a surprise: Instead of 4 beats, we get only 2 beats with which to end the sentence: “He restoreth my soul.” That is yet a bigger and better gift than the mere “maketh” and “leadeth” acts that precede it. By the time we reach this shortened line, we have developed a sense of how long it takes to read a line: This 2-beat line

now seems to expand and fill the same time and weight previously experienced with each of the 4-beat lines. That is a musical effect – slowing down and increasing import, otherwise known as *rallentando* and *crescendo*.

Because to jump from 2 beats all the way back to 4 might seem a bit of a leap, the next line moderates that by having only 3 beats, with the text returning to “He leadeth me.” And then, once again, a shortened 2-beat line ends a sentence.

One of the remarkable products of a colometric of a fine piece of writing is our ability to look at the passage vertically, in the columns created by the rhythm. Look at the left-most column of these first six lines. We find the structure not only of the grammar but of the thought progression into which we have been led: The Lord . . . maketh me . . . leadeth me . . . restoreth . . . leadeth me,” all “for his name’s sake.”

The seventh line extends to 5 beats. In prose, 5 is usually the limit. In the best of prose, it is used mostly or only for the biggest of moments, like our journey through the valley of the shadow of death. The “extra” beat might be considered the “Yea”; it tells us something special is about to be said – something that deserves 5 beats. Read it with a rising tone and increasing volume – *rallentando* and *crescendo* once again. And yet this is not the main clause, but only the “though” clause. The next clause, (“I will fear ..”) is the main clause. And that main clause brings us back to the safety of 4 beats. It presents us with the formal statement of the relationship between the “I” and the “Thou.”

We have descended from the 5-beat line to a 4-beat line; and the settling down continues, as the next line descends further to only 3

beats. It is another statement of the “I/”Thou” relationship. If you consider these two lines (the 4-beat and 3-beat lines) together, you see once again the reversal technique we noted above. There it was only made of sounds – Lord/Shepherd/shall/want. Here it is made of the I and the Thou: “**I** will fear/**Thou** art with me/**Thy** rod and staff/comfort **me**. In Rhetoric, that reversal technique has a name – *chiasmus*.

This three-line sentence thus has a 5-4-3 progression of beats per line. The next sentence also takes three lines, producing yet another sense of balance. It too starts with a grand 5-beat line to describe the grandest of gifts; and it too descends from there, this time to a 3-beat line followed by a 2-beat line. The second descent is a kind of further descent from the first descent: 5-4-3 becomes 5-3-2. Once again, a 2-beat line is used to end a sentence.

The final sentence begins by returning to a 3-beat line, since jumping directly to 4 beats after the 2-beat resolution might seem too much of a leap. Then the psalm can return to 4 beats for the final two lines, leading us back in the rhythmic comfort zone from which we began.

And what figure of speech do we encounter at the Psalm’s end? Why, *chiasmus*, of course – once again mainly in sound, this time using “f” and “d”: **f**ollow/**d**ays/**d**well/**f**orever. We have dealt with the shadow of death and loss; we have been supported in the presence of our enemies; but we end on the wonder of experiencing goodness and mercy all the days of our life, and then dwelling in the house of the Lord ever thereafter.

Here is my version of the 23rd Psalm without its music:

Because the Lord acts as my shepherd, I have everything I need. He guides me to restful places and cares for my soul. Because of Him, I am led to do the right thing. Even in the presence of death I will not be afraid because of His presence and the help He gives me. He protects me against my enemies and makes me feel special. I really am blessed. I am sure to have a fine life and a really fine afterlife.

The *logos* has remained essentially the same; the same emotions of *pathos* are dealt with; and the identity of the Singer of Psalms has not changed, even though he is harder to recognize. The grand difference between the original and my debasement of it lies in the *musikos* of the original and the tone-deafness of my musicless revision.

So what has this to do with legal writing? A great deal.

You don't have to construct colometrics of your own prose. But once the structure and vocabulary are doing what you want them to, it will benefit you to do a reading of your text with an ear to rhythmic balance. Does the music of your prose coincide with the meanings you want your readers to perceive? Are lighter-weight concerns in your text badly matched with heavier-weight musical moments? Or vice versa? Can you learn to make the music work *for* you and *with* your reader?

These musical concerns stemming from rhythm, sound repetitions, and the arranging powers of rhetorical figures, can all be learned by paying attention to how great moments in speech became great. It is to that end that I turn my attention for the next series of essays "On the Papers." Next up: Abraham Lincoln's Gettysburg Address.