Clearing the Fog of Words
Writing for Effect and Efficiency

Lynn N. Hughes
United States District Judge

The University of Texas
Admiralty and Maritime Law Institute
Houston

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Lynn N. Hughes

Lynn N. Hughes is a United States District Judge in Houston. Before his federal appointment in 1985, he was a Texas trial judge for six years. Since 1973, he has been an adjunct professor at South Texas College of Law. He has also taught twice at the University of Texas. He serves on the advisory board of the Law & Economics Center of George Mason University's Law School in Virginia.

He received his bachelor of arts from the University of Alabama, his doctor of jurisprudence from the University of Texas, and his master of laws from the University of Virginia. He got something of a business education by running a mining equipment venture in 1969-70.

Judge Hughes served as co-chairman of the Houston World Affairs Council in 1999-2000 and is a member of the Council on Foreign Relations. He has been an advisor to the *Houston Journal of International Law* since 1980.

Also, he has been an advisor on constitutional law and privatization to the European Community, Moldova, Romania, Albania, Belarus, and the Ukraine.

515 Rusk Avenue, Room 11122
Houston, Texas 77002-2605
(713) 250-5900

Clearing the Fog of Words: Writing for Effect and Efficiency

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1. *Introduction.*

A. *Texts.*

"Ancestor worship in the form of ritualistic pleadings has no more disciples."

JOHN MINOR WISDOM, Circuit Judge

Thompson v. Allstate Ins. Co., 476 F.2d 746, 749 (5th Cir. 1973).

"Prose is architecture, not interior decoration, and the Baroque is over."

ERNEST HEMINGWAY

B. *Convention.*

When I speak of simplified, clear forms, I inevitably get the reaction that somebody out there requires bad writing. That is not true. Abundant bad writing is no more proof that it is somehow necessary than abundant bad architecture is proof of the inherent unattractiveness of physics.

The State Bar of Texas conducted a survey of state judges. Over 80% of them preferred a radically simplified version of papers. This should assuage fears you may have of being criticized for brevity and clarity. The United States District Court for the Southern District of Texas has officially and formally endorsed the use of plain language in court.

Look at the forms attached to the Federal Rules of Civil Procedure. They exhibit little of the wasteful nonsense that has become commonplace. They were written by old lawyers in the late 1930s.

C. *Purpose.*

If you insist on filing a paper, you must want something from the court that the other side does not want you to have; otherwise there is no need for it. There are four steps:

(1) The first step is to think. No document can rise above the thought that generated it.

(2) Tell the court briefly, clearly, and precisely what you want.

(3) Tell the court briefly, clearly, and precisely why—legally and factually—you ought to get what you want.

(4) Furnish the court with a proposed order that grants the *relief* specifically.

2. *Definitions*.

A. *Motions*. Motions are requests for the court to act; the court acts through orders. Whenever you want the court to do something you move. If you cannot find a form to adapt—slavishly mimic, usually—just call it a motion for whatever you want. The extrinsic proof of the facts if you need it should be appendices. In modern practice, the motion itself frequently includes argument and authority, but in longer, more complex motions, the motion should be separate from the argument. If nothing else, they look shorter separated. A two-page brief on jurisdiction and a three-page one on limitations are much easier to use than having to find the different sections of a longer memorandum.

B. *Briefs*. Briefs are presentations of legal authority, with the associated facts, to support a request. There is a reason they are called "briefs"; they are supposed to be short. Pages of text and citations untethered to the specifics of your case may impress your client but it will only irritate the judge.

C. *Orders*. An order is a judicial act. Directed verdicts and injunctions must be supported by articulated reasons, but most orders, including final judgments, are expressions of the decision alone.

D. *"Transaction" Documents*. Contracts, deeds, wills, board minutes, and other office practice papers are simply aids to memory. Many of them are working documents in that the client must refer to them occasionally to know her responsibilities, making their ease of use critical.

3. *Facts*.

Yes, facts. The judge either is inundated with trivia or given only elegant propositions of law to apply to mere names. As T. H. Huxley said, "There is nothing like a sordid fact to slay a beautiful theory." It is essential that you give the court the facts that it needs to understand who is doing what to whom. Develop the ability to present

the factual context of a legal question in one brief paragraph, at the beginning. At least one-third of motions for summary judgment are denied or postponed because the court is not supplied the right facts, and invariably these facts are not contested. Hone your sense of relevance to focus on the facts that make the picture complete but brief. Isolate and furnish the court with the pertinent, material, operative facts.

You cannot effectively argue your case or the precedential cases if you do not understand what happened to the people in them.

A. *Language*. Once you understand what it is in your case that the judge needs to know, express those facts as crisply as possible. Be concrete and specific, not vague and abstract. "John Brown was *hanged*," tells the reader more than either that he was *killed* or that he *died*. Economy and precision aid each other.

B. *Uncontested*. Facts to support a motion, especially a dispositive one, need to be uncontested; that means that the other side has no good faith basis for questioning the fact's truth. A "good faith basis" usually requires a precise assertion of a contrary version of that same fact rather than a simple "no it's not". Simply assert those facts that you can support later; those assertions, however, are your representations to the court, and your professional reputation depends on their being true in the number.

4. *The Case's Style*.

Remember that the style is the first part read. It is used to route the paper. The style should be simple and accurate.

A. *Number*. Because most courts have a central file operation and thousands of cases, the correct action number is critical. In the long, twisted history of your case, occasionally look at the fee receipt or other original document to make sure you have not erred along the way.

B. *Capacity*. Do not put the capacities of the parties in the style. There is no requirement that the style contain anything except the proper name of the entity who is a party. A style that described the plaintiff as only "Thomas A. Hendricks, Plaintiff," if pleaded in the body, could well support Hendricks in all these capacities: (a) individually, (b) as guardian of Garret A. Hobart, non compos

mentis, (c) as trustee of the Mondale Electronics Inc. Pension Fund, and (d) as attorney-in-fact for W. Rufus King Ltd. The rules require you to plead your client's capacities; it does not say to put them in the style.

C. *Common Names*. The rules allow you to sue entities in their common names, but if you choose to use an assumed name, like a corporate division, do not put an explanation of its derivation in the style. If there are multiple names being used for a party, explain at the beginning of each paper who is who.

5. *Caption*.

A. *Informative*. Label the paper something useful. "Motion for Summary Judgment" is not helpful; "Clinton's Motion for Judgment on Limitations" is. "Order" is meaningless; "Interlocutory Dismissal of Clinton" is so obviously meaningful that it may actually get entered on the docket intelligibly.

B. *Short*. The label must be truncated. "Clinton Banking & Trust Company of Delaware, Inc.'s, Motion to Disqualify Attorneys for the Third-Party Defendant Thomas A. Hendricks or in the Alternative for Sanctions" is positively sick. Make it say: “Clinton's Motion to Disqualify Hendrick's Counsel.”

C. *Agreed.* If the motion is agreed, put the word *agreed* in the caption. It will be placed in a stack of routine matters for reasonably quick direct disposition by the judge.

6. *The Body*.

A. *First Paragraph*. Say something useful right at the start. The first 100 words of virtually every court paper are pointless recitations and formalisms. Summarize the document in thirty-five. Start strong. Many judges will not get past the first fifty words, so use them well.

B. *Number, Label, and List*. Use some form of numbers other than roman numerals, add labels that identify the paragraph or section, and list in columns all strings of more than three things, like dates, amounts, or names. Do not mix your numbering system. Be consistent. Unless you can write your zip code in roman numerals, right now, do not use them at all. If you think the clients like or expect them, why don't you bill your clients in roman numerals?

C. *Brevity, Clarity, and Precision*. This label defines your goal; to plead properly you must accomplish all three. Saying something twice badly is not equal to saying

it once right. When you must use legal terms, use the correct one; do not use *tendered* when you mean *delivered*. A *lease* does not equal a *bailment*. Detail and precision are not the same thing.

D. *Humor*. Be careful. You do not have to be morbid or ponderous, but most humor is pointed, and it risks offending the reader to the benefit of your victim.

E. *Exaggeration*. Do not overstate anything: not your facts; not your law. Calling law "clear" or "blackletter" does not persuade. Do not claim more for a case than it will actually support; use "suggests" for "holds" when that fits.

F. *Emotion*. Anger and insults are counterproductive. Ours is supposed to be an intellectual enterprise, although the quest for justice may properly generate some restrained indignation, modest amazement, and appreciated irony. Squash emotion, especially an emotional reaction.

G. *Quotations*. Shorten long quotations by the honest use of ellipsis. Long quotations from contracts and statutes rarely can be read easily. Leave out the trivia, redundancies, and unnecessary qualifications. Hidden in most statutes is a simple statement, but it has been qualified to death.

H. *Typographic Oddities*.

(1) *Capital Letters*. Capitalize only proper nouns. All nouns are not proper, even if they were used as titles earlier in the document. Just because you have filed a paper called a motion for a summary judgment does not make the phrase “summary judgment” require capitals every time it is used. Never capitalize whole words in the text; that includes ships' names.

(2) *Quotation Marks*. Do not put them around exhibit numbers or names used as shorthand references, like “Bank” and Exhibit “A”; that is silly.

7. *Structure*.

The structure of a legal argument is: *x* is true because *a, b,* and *c* are true. Structure your briefs and motions like that. Start with your conclusion so your reader will know why you are telling him all the details.

8. *Motions*.

A. *Nature of the Request*. Similar to the statement of the case paragraph in a complaint, the first paragraph in a motion must succinctly tell the court the essence of the problem.

B. *Specifics*. The first paragraph is supplemented by the minimum number of details to support the request.

(1) *Who*. Who wants whatever is being sought. Most cases have more than two parties, so using the terms *plaintiff*, *movant*, and *defendant* is not helpful. This is true for all papers.

(2) *From whom*. It is critical to say exactly which party you are addressing; there may be a dozen recalcitrant parties who need compelling.

(3) *What*. Say what you want from the court. Do not say that you want your motion granted. In simple, precise terms, tell the court the specific relief you want; compulsion, yes, but how? Do you want a costs award, a claim struck, or a punitive assessment? If you have alternative requests, make each of them specific, show your priority, and furnish an order that is adaptable to each one or include several orders.

(4) *Why*. Conclude with your authority for the relief requested. A reference to a rule is usually enough; add a case applying it under similar facts if you think it is a hard decision. If the motion has to explain much more than this, then it probably should be argued in a separate brief.

9. *Supporting Material*.

A. *Joint Statement*. Try to get both sides to agree to a statement of facts. Most of the time there is no argument over facts like the location of a principal office, date of a firing, or authenticity of a letter.

B. *Depositions*. If deposition testimony is used, excerpt the parts you need as an attachment or quotation. To be safe, you may want to file the entire transcript with the clerk, but compress into a handy form the part you really want the judge to read. If a lot of a deposition is used, file the whole document with a vertical line of blue in the margin for one party and a red one for the other side.

C. *Affidavits*. Make them simple and direct, not abstract legal conclusions sworn to by a vice-president of accounting. Make affidavits short and factual. Rather than saying that all lawful offsets and credits have been made, say that there were none to make or that the only one is the deduction of $4,250 from the proceeds from

the sale of collateral. Break the affidavit into short numbered paragraphs so that they may be referred to easily.

D. *Chronology*. A column of dates with the associated event to its right is an effective way to show the context of the suit, especially if you need to discuss a sequence of events. Use time-lines.

E. *Admissions*. If you do your discovery properly, the results should be easy to transfer into support for your motion. Either quote the admission or accurately paraphrase it. Only file the whole set of admissions when the other side quibbles in its response.

F. *Attachments and Summaries*. Never attach a one-half inch stack of invoices or similar stuff to a motion. That is why we have rules about accounts. If you are too lazy to prepare a proper summary that lists the invoice number, date, and amount, with credits shown similarly, and with totals, I am too lazy to do it for you. If invoices are contested, you may attach an example to show the signature or other fact not easily stated with the same force that a copy carries.

G. *Dates*. Do not include mindless recitations of who filed what when. Dates should be only as specific as the information needs to be. Saying that a suit has been pending since the spring of 1983 is better for conveying the passage of time than the false, unnecessary precision of saying that it was filed on April 10, 1983.

H. *Assumptions*. If you assume for the purpose of a motion that the other's fact is true, make sure the conditional nature of your assent is clear so that a court of appeals does not render against you.

10. *Responses*.

A response to a motion is simply a counter-motion. You answer a motion by showing that what the movant asserts is not true, requiring that something else be true, which you must establish.

A. *Extension*. If you need more time to respond sensibly, ask for it, but ask for a specific new date for a specific reason, not just “some time” for “some discovery.”

B. *Denials*. A negation usually implies that you know something to be true that is different from the movant's position. Be prepared to show what the actual fact is. Rather than answering by saying that the allegations in a paragraph are denied,

restate the paragraph as an admission or denial in your own wording of the item. You can correct minor misstatements and rephrase the allegation so that it is less harmfully colorful. Which of these two answers communicates better?

> Your defendant admits the allegations contained in ¶ XVII.
>
> *or*
>
> Wheeler admits that it is a Delaware corporation, with its principal office in Chicago, Illinois, and is registered to do business in Texas.

11. *Briefs*.

A. *Conclusion first*. Start your brief with a succinct statement of your position and then add the facts of the case as you discuss each authority to the extent they are necessary. It is frustrating to read case citations without knowing where the author is trying to take us and how that case relates to the issues being decided.

B. *Citations*. More are not better. The strongest is a twenty-year-old supreme court case with two recent applications by a court of appeals with facts as near your facts as you can get. Use brief parentheticals to show the context of the cited case, like (promissory note) or (land contract), but do not write long explanations as part of the citation. Do not put citations in the middle of sentences. Write a statement, and put the citation after the sentence. If the whole paragraph is derived from a source of authority, put the citation at the end of the paragraph; do not put *id.* after each sentence. If the case is hard to find, attach a copy. Do not highlight headnotes.

C. *Brief*. Be succinct. Focus on the specific facts and legal propositions that illuminate your position. Shorten quotations from statutes and contracts.

12. *Orders*.

Do not submit a proposed order that grants the motion. Submit one that orders the *relief* you want. You really do not want your motion to dismiss granted; what you want is their complaint dismissed. "This case is dismissed," is hard to misunderstand.

A. *Separate Judgment Rule*. The federal rules require that an appealable order be contained in a separate judgment. That means that it is not part of the opinion, nor buried in the findings and conclusions. The traditional "Memorandum and Order" violates this rule. Since it is unfortunately difficult to tell which orders are

appealable, always embody the court's decision in a simple document that speaks in the present tense (active voice, if possible). Injunctions of every kind are different; they require reasons in the order itself.

B. *Ordered, Adjudged, and Decreed.* The repetition of this mindless trilogy is wasteful and stupid. How does the court "adjudge" a motion to substitute counsel?

(1) A *judgment* is the determination on the merits of the rights of the parties.

(2) A *decree* is a judgment in equity. Because both the United States and Texas court systems merged law and equity long ago, you can use either word, but the use of both is redundant.

(3) An *order* is a judicial determination of all preliminary proceedings and of ultimate dispositions not on the merits. Order is the generic term for all actions by a court.

C. *Signed, Entered, Rendered, and Done*. The signature line for either a federal or state judge should be: "Signed _____, 2005."

(1) The act of a judge's signing his name is rather cleverly called "signing." Under Texas rules, signing is the essential date.

(2) Rendition is the court's public announcement of a decision, usually orally in court, but sometimes done through a letter or other paper with findings and conclusions. The act of rendition, when the whole process is in chambers, is simultaneous with the signing of the order because a private rendition is self-contradictory. Omit "rendered" unless you are preparing a written order for something actually rendered earlier and for which it may be important to note the time or circumstance of its rendition.

(3) Entry is the clerical act of noting on the court's summary record of the case—docket sheet—the fact that the judge has signed an order or rendered an unwritten order. Judges do not enter; clerks do. Under the federal rules, entry is the essential date.

(4) Using "done" as the signature line's verb is a practice that apparently developed to obscure the distinction between signed and entered. Sometimes the lag between the acts was embarrassingly large. It makes the record equivocal and should not be used.

(5) Using "denied and dismissed" is contradictory. A denial is a judgment on the merits, and if ruled on, it cannot be dismissed. A dismissal is a ruling disposing of it other than on the merits, and it cannot be ruled on by a denial if it is being dismissed.

D. *Recitations*. Whether it is a final judgment or a house-keeping order, keep it bare and decisional. Omit all recitations of intermediate steps or background. The only potentially helpful exception is that of who moved; that may help separate the ninety-three orders compelling something and help the clerk keep track of which motions have been decided.

> At law it is not necessary to state in a judgment any of the precedent facts or proceedings on which it is based. ... Recitals as to service of process and appearance are unnecessary either as to jurisdiction or to the regularity of the judgment.

FREEMAN, JUDGMENTS 124 (1925), citing Texas and federal cases.

> But in America the decree does not ordinarily recite either the bill or answer or pleadings, and generally not the facts on which the decree is founded.

Whiting v. Bank of the United States, 13 Pet. R. 13, 14 (1824) (Story, J.), quoted in *Hamilton v. Ward*, 4 Tex. 356, 361 (1849).

E. *Authority for Writs*. The parties are automatically entitled to have the clerk issue the writ appropriate to the judgment of the court; no authorization or direction in the judgment itself is necessary nor should it be included. Many proposed collection judgments end with the granting of whatever "writs are necessary to enforce the judgment." That is wrong. A judgment for money does not ordinarily entitle the judgment creditor to mandamus, injunction, certiorari, or many other writs. "[I]t is unnecessary, if not improper, to incorporate an order or direction for the issuance of execution or other process . . . ." 1 FREEMAN, JUDGMENTS 170 (1925), citing *Bludworth v. Poole*, 53 S.W. 717, 719 (Tex. Civ. App.--Galveston 1899, no writ); accord *Troutenko v. Troutenko*, 503 S.W.2d 686 (Tex. Civ. App.--Houston [1st Dist.] 1973, no writ).

F. *Writs*. Writs are the papers signed and issued by the clerk, not the judge, giving notice of some event in the litigation; for example:

(1) The writ of summons or citation gives notice of the inception of the suit to those who are included;

(2) The writ of subpoena notifies a witness to show up;

(3) The writ of injunction gives notice that the court has decreed that something shall not be done; and

(4) The writ of execution notifies the sheriff and the public that he is authorized to seize and sell the property.

13. *Conclusion.*

I do not expect sympathy for the judges who have to sort through the thousands of pages delivered to them each week. I know that your client expects documents that he can understand. I know that your client would like to have his position presented with clarity and precision, with attractive cogency. I know that judges want to decide on the factual and legal merit of an claim, with frankly as little wasted effort as reasonable.

End

Legal Writing

Lynn N. Hughes

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1. Winston Churchill Cabinet Memorandum (1940)
2. John J. Pershing Memorandum (1918)
3. Land title diagrams from brief in Fifth Circuit
4. George C. Marshall Note (1944)
5. First page of brief by a solicitor general without formalisms
6. Opening & closing by Brandeis, Hughes & Kellogg (1894)
7. Opening & closing from Pennzoil's *Texaco* brief (1986)
8. A "Standard" Motion Revised
9. Omit Recitations in Orders
10. Typographical Conventions for Vessels
11. Word Hints: Five Minutes to Clearer Writing
12. Texas Rules of Evidence 902(10)b
13. Duval County Letter (1971)

Winston S. Churchill: War Cabinet Memorandum

(War Cabinet Paper 211 of 1940, *Churchill papers*, 23/4)

9 August 1940 10 Downing Street

BREVITY

Memorandum by the Prime Minister

To do our work, we all have to read a mass of papers. Nearly all of them are far too long. This wastes time, while energy has to be spent in looking for the essential points.

I ask my colleagues and their staffs to see to it that their Reports are shorter.

(i) The aim should be Reports which set out the main points in a series of short, crisp paragraphs.

(ii) If a Report relies on detailed analysis of some complicated factors, or on statistics, these should be set out in an Appendix.

(iii) Often the occasion is best met by submitting not a full-dress Report, but an Aide-mémoire consisting of headings only, which can be expanded orally if needed.

(iv) Let us have an end of such phrases as these: 'It is also of importance to bear in mind the following considerations . . . , or 'Consideration should be given to the possibility of carrying into effect . . . . Most of these wooly phrases are mere padding, which can be left out altogether, or replaced by a single word. Let us not shrink form using the short expressive phrase, even if it is conversational.

Reports drawn up on the lines I propose may at first seem rough as compared with the flat surface of officialese jargon. But the saving in time will be great, while the discipline of setting out the real points concisely will prove an aid to clearer thinking.

General John J. Pershing's
Letter to Major General James G. Harbord

March 1918

HEADQUARTERS A. E. F.

___7___1918

MEMORANDUM from

THE COMMANDER-IN-CHIEF

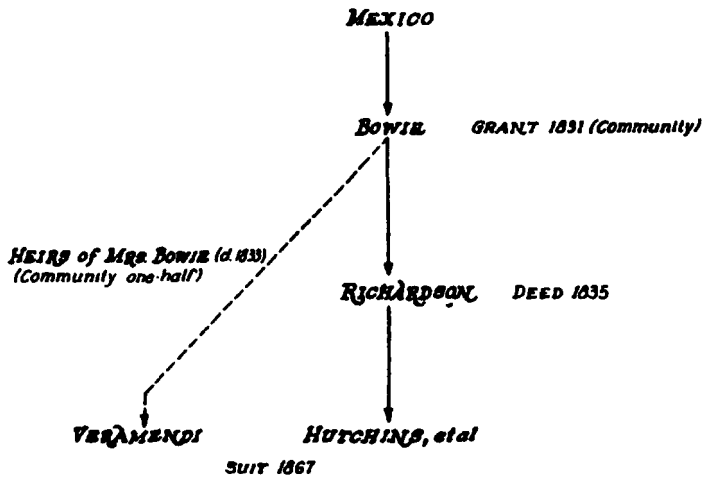
To *Chief of Staff*

Confidential

Don't you think these letters of Sojans are too rambling, too much language, too many circumlocutions, too many indefinite phrases.
The work coming from A.S. is not being well done. J.J.P.

Sojans were officers doing administrative support and A.S. was Allied Staff.

VERAMENDI v. HUTCHINS



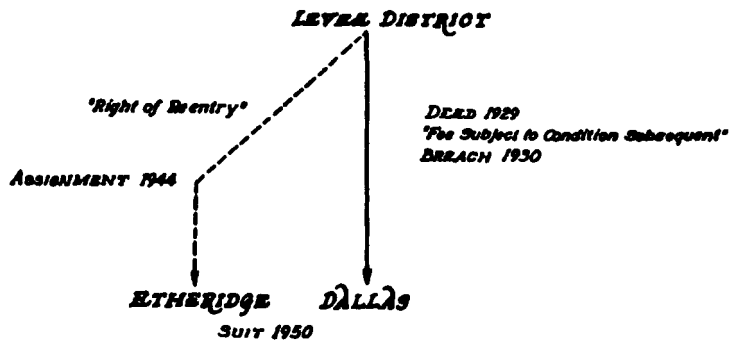
Absolute conveyances by trustees to grantees with knowledge of the trust have been held not to afford the grantees the protection of Article 5507 since "title" as used in that act necessarily includes both the legal and equitable titles as granted by the sovereign to the full extent the original grant conveyed them. *Leyva v. Pacheco*, 358 S.W.2d 813 (Tex. Civ. App.—Fort Worth 1943, writ ref'd). *District Grand Lodge No. 25 v. Logan*, 177, S.W.2d 813 (Tex. Civ. App.—Fort Worth 1943, writ ref'd).

There is no difference between an interest missing from the grant to the adverse claimants and a strip of land missing from a claimant's land as granted by the survey; neither will support a claim under the three-year

statute. "Appellants do not have title or 'color of title' because there is no showing that the strip of land in controversy was included within their survey as originally laid out on the ground." *Sanders v. Worthington*, 349 S.W.2d 115 (Tex. Civ. App.—Eastland 1961), reversed on other grounds 382 S.W.2d 910 (Tex. 1963), applying for a claim under Article 5507. *Pebsworth v. Behringer*, 441 S.W.2d 524 (Tex. 1969).

The *City of Dallas v. Etheridge, supra*, presents the factual arrangement of the plaintiffs and defendants in the case on appeal.

CITY OF DALLAS v. ETHERIDGE



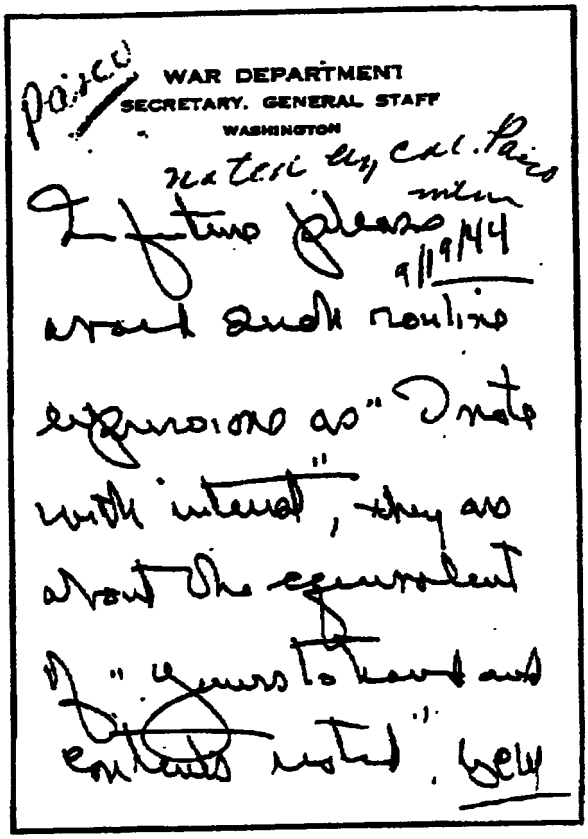
The Humphrey deed with its condition subsequent of commercial use is parallel to the Levee District deed with its condition subsequent of non-park use. The right of reentry devolved upon the named plaintiffs by devise from the grantors of the Humphrey deed; the Levee

George C. Marshall on Plain Writing

General George C. Marshall was Chief of Staff of the United States Army in World War II and Secretary of State afterwards. The American reconstruction of Europe's economy under his stewardship was called the Marshall Plan.

In this example of the careful editing Marshall normally did on his correspondence, he complains to Assistant Secretary of the General Staff Merrill Pasco about the style he used in a September 18, 1944, draft letter to Frank Turgeon, Jr., a Palm Beach, Florida, photographer. The offending sentence read: "I noted with interest the recognition that has been given to the portrait you made of me." Marshall returned the draft with this note. It says, "In future please avoid such routine expressions as 'I note with interest,' they are about the equivalent of 'yours to hand and contents noted.' GCM"

4 PAPERS OF GEORGE CATLETT MARSHALL: Aggressive and Determined Leadership, June 1, 1943-December 31, 1944, at 594 (Johns Hopkins 1996)(Larry I. Bland and Sharon Ritenour Stevens, eds)



WAR DEPARTMENT
SECRETARY, GENERAL STAFF
WASHINGTON

Pasco
Note by Col. Pasco
In future please
9/19/44
avoid such routine
expressions as "I note
with interest", they are
about the equivalent
of "yours to hand and
contents noted". GCM

In the Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1493

AIR LINE PILOTS ASSOCIATION INTERNATIONAL, PETITIONER

v.

JOSEPH E. O'NEILL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Since the 1940s, petitioner has represented Continental Air Lines pilots in collective bargaining with the airline. In 1983, after filing a petition under Chapter 11 of the Bankruptcy Code, Continental repudiated its collective bargaining agreements with petitioner and other employee unions and unilaterally imposed "emergency work rules" that cut pilots' salaries by more than fifty percent. In response, petitioner initiated a strike against Continental. Pet. App. B2.[1]

[1] There are four separately paginated appendices to the petition, numbered 1 through 4. To simplify citations, we will cite to them as though they had been denominated A through D.

Eltk

Return to Edwin H. Abbot
50 State Street, Boston.

Circuit Court of the United States,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

JOHN SWOPE

v.

HENRY VILLARD ET AL.

BRIEF FOR EDWIN H. ABBOT ON DEMURRER.

LOUIS D. BRANDEIS,
CHARLES E. HUGHES,
FREDERIC R. KELLOGG,
of Counsel for Defendant,
EDWIN H. ABBOT.

BOSTON:
ALFRED MUDGE & SON, PRINTERS,
No. 24 FRANKLIN STREET.
1894.

E-1

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN SWOPE,
Plaintiff,
AGAINST
HENRY VILLARD *et al.*,
Defendants.
} In Equity.

BRIEF FOR EDWIN H. ABBOT

ON DEMURRER TO PART OF THE BILL OF COMPLAINT.

This suit was begun in the Supreme Court of New York on September 13th, 1893, and was duly removed to this Court. It is a bill in equity brought by a stockholder in the Northern Pacific Railroad Company to enforce an alleged liability of the defendants Villard, Colby, Hoyt and Abbot to that corporation. The Northern Pacific Railroad Company, Thomas F. Oakes, Henry C. Rouse, and Henry C. Payne, its receivers appointed August 15th, 1893, and the Chicago and Northern Pacific Railroad Company are also joined as defendants.

The bill alleges that in September, 1889, the defendants Villard, Colby, Hoyt and Abbot were directors of the Northern Pacific Railroad Company; that they then owned certain lands and railroad properties in Chicago, which had cost and were worth about $8,000,000, and that they confederated and conspired together "in effect to sell" these properties to the Northern Pacific Railroad Company on such terms as to give themselves an exorbitant profit; that pursuant to this conspiracy

E-2

Hawes v. *Oakland*, 104 U. S. 450, 457.
McDougall v. *Gardiner*, L. R. 1 Ch. D. 13.

The plaintiff cannot therefore maintain his bill against the defendant Abbot because it shows no liability on the part of the latter to account for profits in any event, no fraud upon or wrong to the corporation, and a ratification by the stockholders of the corporation of the transaction complained of.

IV.

This demurrer should be sustained, because the plaintiff has been guilty of laches.

One who seeks such relief as the plaintiff prays for must act with reasonable diligence.

Twin Lick Oil Co. v. *Marbury*, 91 U. S. 587, 592.

While mere lapse of time is not necessarily a bar to relief in equity, the bill will be demurrable, if it shows on its face long and unexplained delay.

Lonsdale v. *Smith*, 106 U. S. 391.

In *Harwood* v. *Railroad Co.*, 17 Wall. 78, 81, where five years of unexplained delay was deemed a bar, the Court said: —

"The sale was made five years before the commencement of this suit, and it is fairly to be inferred from the bill that the plaintiffs were aware of the proceedings as they progressed. Their knowledge of the mortgage sale is expressly admitted. The allegation of ignorance is, in general terms, of the fraudulent acts and arrangements. They do not allege when they acquired the knowledge, nor give a satisfactory reason why it was not sooner obtained. For aught that appears, they have slept upon their knowledge for several years."

In *Marsh* v. *Whitmore*, 21 Wall. 178, 184, the Court said: —

"The complainant does not set forth specifically any grounds which could have constituted impediments to an earlier prosecu-

tion of his suit. He does not even inform us when he first became acquainted with his supposed wrongs. His language is that he was not aware of the purchase by the defendant *until lately* — language altogether too vague to invoke the action of a court of equity."

In the case at bar, the bill shows that the transactions complained of were completed on April 1st, 1890. The bill makes no allegation that the plaintiff has not, at all times, known of the matters on which he now bases his claims for relief. Almost three and a half years elapsed before the suit was commenced. This long delay is wholly unexplained and shows such acquiescence by the plaintiff or such dilatoriness as conclusively bars his right to relief.

LOUIS D. BRANDEIS,
CHARLES E. HUGHES,
FREDERIC R. KELLOGG,
of Counsel.

MARCH, 1894.

E-4

No. 85-____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PENNZOIL COMPANY,
Appellant,

—against—

TEXACO, INC.,
Appellee.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

LAURENCE H. TRIBE
Counsel of Record
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

JOSEPH D. JAMAIL
JAMAIL & KOLIUS
3300 One Allen Center
Houston, Texas 77002

HARRY M. REASONER
VINSON & ELKINS
3300 First City Tower
1001 Fannin
Houston, Texas 77002

ARTHUR L. LIMAN
MARK A. BELNICK
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
345 Park Avenue
New York, New York 10154

JOHN L. JEFFERS
G. IRVIN TERRELL
BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

W. JAMES KRONZER
1001 Texas, Suite 1030
Houston, Texas 77002

PAUL M. BATOR
DOUGLAS A. POE
MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604

May 1, 1986

F

STATEMENT OF THE CASE

At issue in this case is the authority of federal district courts, notwithstanding the Anti-Injunction Act and judicially-crafted comity principles, to interfere with pending state court proceedings by enjoining recourse to the statutes a state has adopted for adjusting the competing interests of judgment winners and losers pending appeal. Apart from its intrinsic interest as a matter of judicial federalism, this issue is of surpassing practical significance not only in cases like this one, involving enormous sums, but in the thousands of routine cases in which litigants cannot afford to post a bond that would stay an adverse judgment pending appeal.

Pennzoil Company sued Texaco Inc. in a Texas state court in February 1984 for intentionally inducing the breach of Pennzoil's binding agreement to acquire 3/7 of Getty Oil Company. In a 4-½ month trial, Pennzoil, in the words of the Second Circuit Court of Appeals (A41),[1]

> established to the satisfaction of a Texas jury and judge that it was unlawfully injured by Texaco's tortious conduct, that as a reasult Pennzoil suffered enormous damages, and that Texaco's conduct was sufficiently egregious to require it in addition to pay punitive damages to the victim.

The jury awarded Pennzoil compensatory damages of $7.53 billion, based on Pennzoil's evidence of what it would cost to replace the vast oil reserves that Pennzoil would have acquired under its lost agreement with Getty. (Texaco introduced no evidence on the issue of damages.) The jury also awarded $3 billion in punitive damages, bringing the total judgment entered on December 10, 1985, including prejudgment interest and costs, to $11.12 billion. (A126-27).

Texas law, like that of most states, provides that a party wishing to appeal from a money judgment "may suspend the execution of the judgment by filing a good and sufficient bond

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1. Citations to the separately paginated appendices will be styled "A____."

QUESTIONS PRESENTED

The judgment below, which authorized a federal district court to interfere with pending state court proceedings by enjoining recourse to the statutes a state has adopted for adjusting the competing interests of judgment winners and losers pending appeal, presents the following questions:

1. May a federal court treat an injunction of state court proceedings as "expressly authorized" by 42 U.S.C. § 1983, and therefore exempt from the Anti-Injunction Act, by transforming into "the state" every private litigant who invokes state judicial proceedings and may call on state officers to help enforce the resulting judgment?

2. Having declared that enforcement of a private litigant's state court judgment is actionable under § 1983, may a federal court avoid the comity principles of *Younger v. Harris* by declaring that the state has no cognizable interest in such enforcement proceedings inasmuch as the underlying action was between private parties?

3. Do *Younger* principles permit a federal court to excuse deliberate bypass of judicial remedies in a state's appellate system where there is no procedural bar to full and fair state court consideration of a litigant's constitutional challenges?

4. Under this Court's *Rooker* and *Feldman* decisions, may a federal court that concededly lacks appellate authority under 28 U.S.C. § 1257 nonetheless review the validity of alleged state barriers to effective appeal on the theory that the private litigant's deliberate bypass of state judicial relief from those supposed barriers permits treating the federal case brought by that litigant as original rather than appellate in character?

5. May a federal court intervene in a pending state court appeal to invalidate and enjoin the state's judgment lien and supersedeas bond provisions on the theory that the Due Process Clause entitles a civil judgment debtor to an affordable stay of judgment pending appeal?

in this Court once state avenues have been exhausted, or to commence a collateral federal action under rules that reward deliberate bypass of the state's judicial system.

CONCLUSION

In its haste to provide immediate and unprecedented relief to Texaco notwithstanding the availability of the Texas state courts and this Court under § 1257 as forums where Texaco could present its constitutional claims in an orderly fashion, the Second Circuit has fundamentally altered the jurisdictional landscape. Weakened by the inconsistent and dubious exceptions pioneered by the court below, the Anti-Injunction Act, *Younger* abstention, and the *Rooker-Feldman* doctrine no longer clearly define the boundaries of the federal and state judicial systems. Dissatisfied state court litigants are free to roam across jurisdictional borders, disregarding comity and manipulating federal tribunals into supplanting state courts and state policies and supervising state procedures in pending state litigation. The logic that generated this federal intervention admits of no limiting principles and can be contained only by the most arbitrary of parameters. For these reasons, the Court should note probable jurisdiction.

Respectfully submitted,

LAURENCE H. TRIBE
Counsel of Record
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

JOSEPH D. JAMAIL
JAMAIL & KOLIUS
3300 One Allen Center
Houston, Texas 77002

JOHN L. JEFFERS
G. IRVIN TERRELL
BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

(*continued on next page*)

Original: This is a form from a State-Bar program with the words that contribute to its meaning underlined.

MOTION TO DISMISS OF
GARNER WELL CONTROL, INC.

THE HONORABLE UNITED STATES DISTRICT COURT:

Now comes Garner Well Control, Inc., hereinafter referred to as "Garner", Third-Party Defendant in the above-styled and numbered action, and files this its Motion [moves] to Dismiss [under] pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof would respectfully show unto the Court as follows:

I.

The action was initially filed by Garret A. Hobart [sued] against defendants Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of a special purpose drilling platform Clinton No. 6, located on the Outer Continental Shelf of the United States adjacent to the State of Texas. The lawsuit was filed on October 21, 1985 claim[ed] that the plaintiff was an employee of Garner Control Services, Inc. At no time has the plaintiff [has never asserted] filed any claim or cause of action against "Garner" in this action.

On April 2, 1986 "Garner" filed its answer to the third-party complaint of Clinton Service Company, defendant and third-party plaintiff, based upon the original [filed a third-party complaint] in which there was an attempt to state a cause of action based upon an alleged agreement of indemnification.

More recently, however, the defendant and third-party plaintiff Clinton Service Company has [added] attempted to state a claim based upon [of] negligence against the plaintiff's employer "Garner". As will be addressed more particularly hereinbelow, Clinton Service Company has no claim or cause of action against [Garner as] the plaintiff's employer "Garner" on an independent theory of negligence.

II.

The Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, et seq., makes the laws of the United States applicable to all artificial islands and fixed structures erected on the Outer Continental Shelf for the purpose of exploring for, developing removing and transporting resources therefrom. Section 905 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A., Sec. 901, et seq., provides that the liability of an employer prescribed in Section 904 of the Act, shall be exclusive and in place of all other liability of such employer to the employee, his parents, next of kin, and anyone otherwise entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act and should be dismissed as to Garner Well Control, Inc.

III.

In response to third-party defendant Garner's Request for Admissions, third-party plaintiff [Clinton] has admitted to the following facts (the numbers correspond to the Admissions):

1. That the alleged accident in question involving Garret A. Hobart occurred on a fixed platform.

2. That the location of the fixed platform in question was at the time of the alleged occurrence involving Garret A. Hobart on the Outer Continental Shelf.

3. That the fixed platform on which Garret A. Hobart had his alleged accident is [was] more than three miles from the shore.

A true, correct and accurate copy of the Answers to Garner's Requests for Admissions are attached hereto, marked as Exhibit "A" and incorporated herein by reference.

IV.

In light of the above, third-party defendant Garner states that there are no disputed fact[s] issues with regard to whether it is an employer under Sections 904 and 905 of the Longshoremen's & Harbor Workers' Compensation Act, which sections were made applicable to this cause by way of the Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, et seq. Accordingly, the liability of an employer prescribed in Section 904 of the Longshoremen's & Harbor Workers' Compensation Act is exclusive and in place of all other liability of such employer to the employee and anyone who might otherwise be entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's & Harbor Workers' Compensation Act and should be dismissed as to Garner Well Control, Inc.

V.

In the alternative, if and in the unlikely event that this Court determines that the Longshoremen's & Harbor Workers' Compensation Act does not apply to the facts of this case then, and in that event, this defendant says that at all times material hereto it [Garner] had in force and effect a policy of Worker's Compensation Insurance and thus the third-party [Clinton's] claim is still barred under the applicable provisions of the Texas Workers' Compensation Act. A true, correct and accurate copy of such policy is attached hereto, marked as Exhibit "B" and incorporated herein by reference for all purposes.

WHEREFORE, PREMISES CONSIDERED, third-party defendant, Garner Well Control, Inc., respectfully requests this Honorable Court to grant its Motion to Dismiss, and dismiss this cause of action against it with prejudice.

Respectfully Submitted,

Edited Version: This is the underlined parts with the fluff. deleted.

MOTION TO DISMISS OF
GARNER WELL CONTROL

Garner Well Control, Inc. (Garner), third-party defendant, [moves] to dismiss [under] Rule 12(b)(6).

Garret A. Hobart [sued] Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of a special purpose drilling platform, Clinton No. 6, on the outer continental shelf adjacent to Texas. The lawsuit claim[ed] that the plaintiff was an employee of Garner. The plaintiff [has never asserted a] claim against Garner.

Clinton Service Company [filed] a third-party complaint of indemnification. Clinton [added] a claim [of] negligence against the plaintiff's employer, Garner. Clinton has no claim against [Garner].

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, makes the laws of the United States applicable to all fixed structures on the outer continental shelf for developing resources. The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, provides that the liability of an employer [under] the Act shall be exclusive and in place of all other liability of [the] employer to the employee and anyone otherwise entitled to recover damages from [the] employer. This action, therefore, is barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act.

[Clinton] has admitted:

1. the accident involving Hobart occurred on a fixed platform.

2. the fixed platform was on the outer continental shelf.

3. the fixed platform [was] more than three miles from the shore.

The Admissions are attached.

There are no disputed fact[s] whether [Garner] is an employer under the Longshoremen's & Harbor Workers' Compensation Act, applicable by the Outer Continental Shelf Lands Act.
[Garner] had in force a policy of Worker's Compensation Insurance and thus [Clinton's] claim is still barred under the Texas Workers' Compensation Act. A copy of [the] policy is
attached.

Garner Well Control, Inc., respectfully requests this Court to dismiss this action with prejudice.

Respectfully submitted,

Suggested Version: This is how it should be written.

GARNER'S MOTION TO DISMISS
CLINTON'S THIRD-PARTY ACTION

1. Dismissal. Garner moves to dismiss Clinton Service Company's third-party action for indemnity and negligence because, as Hobart's employer, Garner is protected by the Exclusivity Clauses of the Longshoremen & Harbor Workers' Compensation Act as applied by the Outer Continental Shelf Lands Act and of the Texas Workers' Compensation Act.

2. Facts.

   A. Garner employed Hobart at the time of the accident on a fixed platform.

   B. The platform was on the US-Texas continental shelf and engaged in resource development.

   C. Clinton was the operator of the platform.

   D. Hobart sued Clinton, and Clinton sued Garner.

3. LHWCA. The Longshoremen & Harbor Workers' Compensation Act is a federal plan for injured workers that parallels the ordinary state workers' compensation statutes. It includes a provision that: "The liability of an employer [under the act] shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages from such employer . . . ." 33 U.S.C. § 905.

4. OCSLA. The Outer Continental Shelf Lands Act applies the LHWCA to structures like the platform on which Hobart worked. 43 U.S.C. § 1331.

5. Texas Act. Garner carried a policy of workers' compensation insurance covering Hobart; therefore, Clinton's action is barred by the similar exclusivity provision of the Texas statute. Tex. Rev. Civ. Stat. art. 8306 (1967).

6. Conclusion. Clinton's third-party action is barred by federal and state statutory law, and its action should be dismissed with prejudice.

Submitted respectfully,

Attachments:
A. Admissions
B. Insurance Policy

P:\H\Speeches & Papers\Papers\WRITE\andard Motion.wpd

Omit Recitations in Orders.

Whether it is a final judgment or a house-keeping order,
keep it bare and decisional. Omit all recitations.

1. A judgment shall not contain a recital of the pleadings, the report of the master, or the record of prior proceedings. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered.

   FEDERAL RULES OF CIVIL PROCEDURE 54(a) and 58.

2. At law it is not necessary to state in a judgment any of the precedent facts or proceedings on which it is based. Recitals as to service of process and appearance are unnecessary either as to jurisdiction or to the regularity of the judgment.

   Freeman, 1 JUDGMENTS 124 (1925), citing Texas and federal cases.

3. In America the decree does not ordinarily recite either the bill or answer or pleadings, and generally not the facts on which the decree is founded.

   Whiting v. Bank of the United States, 38 U.S. 6, 13 Pet. R. 13, 14 (1839) (Story, J.).

4. To incorporate in the judgment a recital that proposed findings were considered by the court would, therefore, accomplish nothing. Such a recital would be improper.

   American Elastics, Inc. v. United States, 84 F. Supp. 198, 199 (S.D.N.Y. 1949).

5. Five recitals in a three-page instrument otherwise indisputably dispositional in nature were enough to preclude its acceptance as a separate document. No matter how manifest a purpose to formulate an appealable order may be, it cannot over-ride Rule 58's explicit extraction of a separate document.

   Diamond v. McKenzie, 770 F.2d 225, 229 (D.C. Cir. l985).

6. He asserts we lack jurisdiction for want of a separate document. The order, it cannot be gain-said, does contain one citation. It would be better had the citation been omitted, and doubtless a very little more would have rendered the order vulnerable to appellant's attack.

   Weinberger v. United States, 559 F.2d 40l (5th Cir. l977).

[Ellipses omitted.]

LYNN N. HUGHES
United States District Judge

Typographical Conventions for the Names of Vessels

Lynn N. Hughes

A quick, random look at pleadings and opinions in maritime cases reveals the pervasive use of unorthodox and ugly forms for the names of vessels. Like most legal writing problems, this results more from carelessness than of competing theories. While awkward typography is, of course, not a significant problem in our profession, but because at some point we must begin to pay attention to what we are saying, ship's names are as good a place for you to start your work on clarity.

The two worst practices are:

- Using a slash in a vessel designation, like M/V for M.V. If you aspire to be a billing clerk with a shipping broker, then write M/V, but be consistent, write the U/S/S *Constitution*, too.

- Typing the ship's name in all uppercase letters, like OLYMPIA for *Olympia* or for simply Olympia.

These practices are unacceptable in formal English text, like briefs and opinions. An opinion sprinkled with the name of a ship in uppercase letters is ugly and sloppy. Typography should help your reader.

The Rules

1. The name of a vessel should be italicized or underscored, if italics are unavailable.
2. Descriptive material should be in roman, including a possessive s.
   A. the *Bayonne Sludge*'s weather deck
   B. U.S.S. *Monitor*
   C. frigate *Constellation*
   D. barge number *72*
3. Periods after initials of craft designations are optional, but be consistent. Never use slashes, like M/V.
4. Types of craft should be in roman.
   A. The airplane was a DC-3 named *Angel Caido*.
   B. Seven LSTs sailed with the *Yorktown*.
   C. The *Amoco Cadiz* was a VLCC.

5. Do not use craft type with initials of identification.

   A. The frigate *Constitution*. Not: the frigate U.S.S. *Constitution*.

   B. The tanker *Torrey Canyon*. Not: the tanker MV *Torrey Canyon*.

   C. The USCG cutter *Vigilance*. Not: USCG cutter USS *Vigilance*.

6. In citations, because the whole style is in italics, the name may be in roman, quoted, or plain. Using quotation marks is preferable because it preserves the visual unity of the citation, and it is parallel to the form for literary works whose titles include titles. A third alternative is to omit any special typographical treatment in citations.

   A. Roman:

      (1) *M.V.* Claremont *v. Gibbons and Ogden*

      (2) *Morgan Bank v. Drill Ship* Carrizo Springs

   B. Quoted:

      (1) *M.V. "Claremont" v. Gibbons and Ogden*

      (2) *Morgan Bank v. Drill Ship "Carrizo Springs"*

   C. Plain:

      (1) *M.V. Claremont v. Gibbons and Ogden*

      (2) *Morgan Bank v. Drill Ship Carrizo Springs*

7. In matters set in all capitals, like titles, italic parts are represented by quotation marks, but in the text revert to rule 1. Use all capitals sparingly, even in captions.

   A. The "PRIDE OF BALTIMORE II" v. MV "BAYONNE SLUDGE"

   B. THE MOTION OF S.S. "MUD ISLAND" FOR SUMMARY JUDGMENT

   C. ORDER DISMISSING THE VLCC "INFERNO"

8. Use *etc.* after the vessel's name to represent "her tackle, apparel, and appurtenances, " except for the first use in the text, if you really think it is important.

9. In captions use the rule in 1 or 7:

   A. The Sloop *Morning Cloud* and Edward Heath,
   Plaintiffs,
   vs.
   M.V. *Bismark, etc., In Rem*, and
   Tuetonic Trading Company,
   Defendants.

B. REPUBLIC OF FRANCE
vs.
THE "RAINBOW WARRIOR"

10. The same rules apply to trains, aircraft, and spacecraft.

A. The Southern Pacific's *Sunset Limited*

B. The Hiroshima flight of the *Enola Gay*

C. The space shuttle *Challenger*

Word Hints: Five Minutes to Clearer Writing

Judge Lynn N. Hughes

1. Capitalize only proper nouns. Never capitalize whole words.
2. Do not use roman numerals.
3. List in columns series of three or more dates, names, or numbers.
4. Adopt short, clear labels for the parties.
   - A. Use part of the name: Acme Consolidated Bank & Trust Co.=Acme.
   - B. Use its real-world capacity: bank (just bank, not "Bank").
   - C. Do not use their lawsuit capacity: plaintiff, respondent.
5. Be active and concrete, not passive and abstract: *car wreck*, not vehicular collision; *moved*, not filed a motion.
6. Use helpful but brief captions: Exxon's Answer; USF&G's Motion for Summary Judgment; Allied's Cross Action against Chase.
7. Omit needless words.
   - A. Never use: said (as an article) or same (as a pronoun); to wit; and/or; hereby (and its friends like herein, whereas, thereof, etc.)
   - B. Say it once right; do not say: each and every; on or about (around); by and through; null and void.
   - C. Avoid tautologies, like: past history, past precedent, past experience; mutual agreement; brief summary; total sum.
   - D. Eliminate stale, useless formalisms, like: comes now; be it remembered that; wherefore premises considered; the following (= *these* or nothing).
   - E. Delete fluff:
     - (1) in accordance with the terms and conditions of = under
     - (2) pursuant to = under
     - (3) in the amount of = of
     - (4) to and including = through

The most valuable of all talents is never using two words when one will do.

Thomas Jefferson

Texas Rule of Evidence 902(10)b.

1. The rule.

> b. Form of affidavit: A form for the affidavit of such person as shall make such affidavit as is permitted in paragraph (a) above shall be sufficient if it follows this form, though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this rule shall suffice, to wit:
>
> [53 words]

2. The rule with needless words struck.

> b. Form ~~of affidavit: A form for~~ the affidavit ~~of such person as shall make such affidavit as is~~ permitted in paragraph (a) ~~above~~ shall be sufficient if it follows this form~~, though this form shall not be exclusive, and an affidavit which~~ [or] substantially complies with ~~the provisions of~~ this rule [.] ~~shall suffice, to wit:~~

3. The rule with the struck words omitted.

> b. Form: The affidavit permitted in paragraph (a) shall be sufficient if it follows this form or substantially complies with this rule.
>
> [20 words, reduced 62%]

4. The rule as it should have been written.

> b. Illustrative affidavit:
>
> [2 words, reduced 96%]

DUVAL COUNTY
CONTROLLER'S OFFICE
SAN DIEGO, TEXAS

October 27, 1971

Mr. R. J. Dyniewicz
Comptroller
George D. Barnard Company
St. Louis, Missouri

Dear Sir:

We have your letter of the 19th with the enclosed statement of your account. If this statement was requested of you I am afraid there has been a misunderstanding somewhere and we have caused you unnecessary trouble —and for this I apologize.

Our books, as a matter of fact, are in complete harmony with yours and the account has been processed for some time and is awaiting the pleasure of the Commissioners' Court—which, in turn, is waiting for the new tax money, due this month, to replenish our coffers. To put it bluntly, we are completely out of money in certain of our vital funds—a state of affairs which never deviates from year to year. Like the oyster, our financial solvency is seasonal and stable only in months with an "r" in them—the rest of the time we are in the financial doldrums due to lack of restraints and scrambled priorities. Now that we are entering the period of solvency again I can assure you that your account will be paid in full within the next thirty days.

I know that it is impossible for an outsider to understand the relaxed and improvident atmosphere in which we operate so I will not attempt to explain it other than to say that we are financially sound and fiscally irresponsible—which may sound like a contradiction in terms, but it really isn't, for we have more than adequate revenue, but like some individuals we have all known, we live poorly in the midst of plenty.

In closing let me say that I do understand the complexities confronting you as Controller in this situation and regret that we are the cause of it. And although you were too polite to say so, I agree that this is a Hell of a way to run a railroad.

Yours very truly,

W.W. Meek

Quoted in *The Fall of the Duke of Duval*, John E. Clark, 1997, at page 271