

Five Ways to Write Like John Roberts

By Ross Guberman

When Chief Justice John Roberts was a lawyer, he once wrote that determining the “best” available technology for controlling air pollution is like asking people to pick the “best” car: “Mario Andretti may select a Ferrari; a college student a Volkswagen beetle; a family of six a minivan. The choices would turn on how the decisionmaker weighed competing priorities such as cost, mileage, safety, cargo space, speed, handling, and so on.”

Did Roberts feel the same way about “best” when Ruth Bader Ginsburg said that he was the “best” advocate to come before the Supreme Court? Or when Senator Chuck Schumer, who voted against his nomination, conceded that even Roberts’s opponents called him “one of the best advocates, if not the best advocate, in the nation”?

Unlike sports, advocacy writing may not evoke a hit list of heroes. Even so, no one questions Roberts’s rock-star status as a briefwriter. Nor was the car analogy plucked at random: According to two Supreme Court insiders, when Alaska hired the nation’s “best” brief writer to write about the “best” technology for an electric generator, the result in *Alaska v. EPA* was also the “best” brief that the Justices had ever seen.¹

So how did Roberts do it?



At least 30 techniques distinguish his writing from the norm. Here are **five of the easiest ones to use** in your own writing.

1. Let your facts “show, not tell.”

The facts in a brief should read like narrative nonfiction, a bit like something you’d read in *The Atlantic* or *The New Yorker*.

Or perhaps in *A River Runs Through It*. Watch how Roberts explains the way the Red Dog Mine, the accused polluter in the case, got its name:

For generations, Inupiat Eskimos hunting and fishing in the DeLong Mountains in Northwest Alaska had been aware of orange- and red-stained creekbeds in which fish could not survive. In the 1960s, a bush pilot and part-time prospector by the



name of Bob Baker noticed striking discolorations in the hills and creekbeds of a wide valley in the western DeLongs. Unable to land his plane on the rocky tundra to investigate, Baker alerted the U.S. Geological Survey. Exploration of the area eventually led to the discovery of a wealth of zinc and lead deposits. Although Baker died before the significance of his observations became known, his faithful traveling companion—an Irish Setter who often flew shotgun—was immortalized by a geologist who dubbed the creek Baker had spotted “Red Dog” Creek.

Now why would Roberts mention an Irish Setter? What does a shotgun-flying dog have to do with the Clean Air Act or administrative law? Is the passage just a flourish of elegant writing that ultimately wastes everyone’s time?

Not at all. Roberts is litigating a classic federalism fight between the states and the federal government. And who knows how a mine fits into the community better than the local and state officials close to the ground?

You’ll find the same technique elsewhere when Roberts “shows” you why the Red Dog Mine plays a vital economic role without “telling” you what to think by shoving that conclusion down your throat:

¹ Roberts’s brief: www.legalwritingpro.com/briefs/alaska-epa.pdf

Operating 365 days a year, 24 hours a day, the Red Dog Mine is the largest private employer in the Northwest Arctic Borough, an area roughly the size of the State of Indiana with a population of about 7,000 . . . Prior to the mine's opening, the average wage in the borough was well below the state average; a year after its opening, the borough's average exceeded that of the State.

2. Add speed through short and varied transitions.

Do you want an easy way to jump-start your prose and streamline your logic? Start your sentences with short, punchy words.



Here Roberts does so three times in a row as he explains why the Alaska agency's decision about the Red Dog Mine's technology should withstand EPA scrutiny:

But the EPA cannot claim that ADEC's decision was "unreasoned." **Nor** can the EPA assert that ADEC's determination in any way results in emissions exceeding national standards or permitted increments. **How** to control emissions within those standards, without exceeding available increments, was for the State to decide.

You'll see other speedy openers peppering the rest of the brief:

Yet instead of addressing the most pertinent legislative history . . .

And the asserted reason for compromising the bright-line rule in the Act . . .

Also vary the logical links you use. Most lawyers stick to eight or so of the tried-and-true—*moreover, accordingly, however*. A great advocate might use 50 or more "signposts" to help the judge track the brief's internal logic. Roberts uses such varied signals as *at bottom, also, under that approach, in short, to this end, because, then, for example, in each case, nowhere, in any event, of course, instead, to begin with, indeed, and thus*, just to name a few.

Finally, instead of just sticking these transitions at the beginning of your sentences, place them closer to the verbs, where they are often more effective and interesting:

The EPA **thus** regards the state review process as the means by which . . . [NOT *Therefore*, the EPA]

Congress **also** established a preconstruction review and permitting process . . . [NOT *Additionally*, Congress established]

The court **then** went on to hold that the EPA had not acted arbitrarily or capriciously . . . [NOT *Subsequently*, the court went on to hold]

3. Add elegance and clarity through parallel constructions.

Also on the style front, look for ways to use more parallelism in your writing. It's not just a stylistic trick. It's a way to streamline information and make your points stick.

Sometimes, you can create a streamlined parallel list:

The Red Dog Mine is the largest private employer in the Northwest Arctic Borough, where geography and the harsh environment **pose** unique employment challenges, **offer** few employment alternatives, and **limit** any concern about other industrial development . . .

Other times, you can compare or contrast two concepts or parties by using a semicolon, as Roberts does here when he contrasts the federal government and the States:

In clean air areas, **the federal government determines** the maximum allowable increases of emissions for certain pollutants; **the States decide** how to allocate the available increments among competing sources for economic development and growth.

And here when he contrasts two ways of finding the "best" way to control pollution:

Deciding that a more stringent and more costly control is "best" for a particular source

may reflect a judgment that the economic benefits of that particular expansion are worth consuming only so much of the available increment; **deciding that a less stringent and less costly control is “best”** for a different source may reflect a different judgment about the value of that specific project.

4. Add interest through short sentences, examples, and figures of speech.

Variety in the prose is another way to ensure a standout brief.

After all, nothing is more tedious than an endless series of medium-long sentences that follow predictable and repetitive patterns.

Here are three Roberts-esque ways to spice up your prose.

First, like most lawyers, you probably try to avoid long sentences. But how often do you include a **short sentence**—say twelve words or fewer:

The basic division of responsibilities carried through to the PSD program.

The EPA, however, had no authority to do so.

Of course, that is just the point.

So too here.

Second, as in the earlier car analogy, **an example** is often a terrific way to bring an abstract legal point to life.

Consider this series of examples. This time, Roberts is claiming that what’s “best” for one state (such as Alaska) might not be best for another—another variation on the Ferrari vs. Volkswagen theme:

For example, one State—experiencing little economic growth in the pertinent area and concerned about the impact of increased costs on a critically important employer—may select as BACT for that employer a less stringent and less costly technology that results in emissions consuming nearly all of (but not more than) the available increment for growth. Another State—experiencing vigorous

economic growth and faced with many competing permit applications—may select as BACT for those applications a more stringent and more costly technology that limits the impact of any particular new source on the increment available for development. A third State—in which ecotourism rather than more industrial development is the priority—may select as BACT an even more stringent and more costly technology, effectively blocking any industrial expansion.

Third, a well-chosen **figure of speech** can be priceless, as long as you’re explaining a complex legal point and not taking a pot shot at the other side:

The awkwardness of considering whether the EPA was arbitrary or capricious in deciding that the State was arbitrary or capricious should be **the canary in the mine shaft**, signaling that something is very much amiss.

5. End with a bang.

As with any good novel or essay, the last sentence in your argument section should crystallize your message and offer the judges a parting thought:

When it came to BACT, however, Congress had a different idea, and left that determination—“on a case-by-case basis”—to the States.

Roberts’s “best” brief stands out for many other reasons as well, and not all of them can be reduced to a technique. But as the preceding excerpts suggest, the mystical world of high-level written advocacy may be closer than you think.

About the Author

As the President of Legal Writing Pro, Ross Guberman conducts hundreds of writing programs a year for many of the world’s top law firms, governmental agencies, and bar associations. He holds degrees from Yale, the Sorbonne, and The University of Chicago Law School. An adjunct professor at GW Law School, Ross is also an award-winning journalist and comments regularly for major media outlets. He is writing a book for Oxford University Press on how the nation’s top advocates write. Contact Ross at ross@legalwritingpro.com.

