

# The Three Little (Actually Big)

## Ps

by Hon. Mark P. Painter



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### Why Worry?

Why should we strive for perfection, or at least competence, in our writing? Are writing skills important to lawyers? Yes—for many reasons: Think of them as PPP.

- *Pride* in the profession. We write for a living. Carpenters saw and nail. Pilots fly; painters paint; surgeons cut. Lawyers write—even litigators. Most cases settle and the litigator writes a contract (settlement agreement). Because writing is our job, we should strive to master at least the fundamentals of grammar, syntax (whatever that is), and style.

- *Precision*. Leaving out a serial comma, misplacing a semicolon, or using the wrong word can change the meaning of our documents. Clients come to us for wills, contracts, and lawsuits. All are written, and they must be precise.

- *Paycheck* (the bill). Many clients might not understand the legal nuances of the documents you send them. But educated clients, especially boomers—who are still mainly in power—will spot grammatical errors. The summary-judgment memo, trial brief, appellate brief, contract, agency filing, or whatever might cost more than a new car, and almost surely more than a boomer's first house. If your document has grammatical errors, or the format is unattractive, it will seem less worthy of the charge. Your paycheck may come from your firm. But the client must first pay the bill for your work.

### A Dash of Error

A previous column discussed the en dash and the em dash. I wrote that we seldom see the lovely en dash. I was wrong—we see it daily—but alas used incorrectly.

**En Dash (–):** An en dash is used in constructions such as Lincoln–Douglas Debates, and 1880–1990, and the Prosser–Keeton Treatise. Note to those keeping ready resumes in case the headhunter calls: You worked at a certain firm from 1999–2004, with an en dash, not a hyphen. A hyphen is used only for hyphenated words (a common-law rule) or for splitting words at the end of a line, which is no longer necessary because word processors fix the problem without

it. Often we see the hyphen (–) used as an en (–) dash. It's not the greatest error, and one that some people might not even notice.

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Remember that an en dash is one-half the size of an em dash—just as an *n* is half of an *m*. You can get an en dash in Word by going to Insert/Symbol/Special Characters.

**Em dash (—):** The em dash is what we usually call a dash—and what is used here, abutting the words it separates. It is used to mark a disruption in the sentence for a parenthetical remark, or instead of a colon.

An em dash is not two hyphens; with typewriters we had to use two hyphens to signify an em dash (or to tell the typesetter to create one) because technology didn't allow double-length keys. So we made do as best we could, just as we did with the lack of italics, though there we used underlining which was a signal to the typesetter to use italics. Never underline citations—we now *have* italics.

But it is strange to see the underused, and even underknown, en dash masquerading as an em dash. No reason I can think of could explain this error: We no longer use typewriters and in any event, the error is in *print*. Even in typewriter days, printers never made the error.

You can see it every day in the *Enquirer*—where there should be an em dash, it has an en dash—and spaces on either side of the en dash. The online edition is even worse—there they use a hyphen.

The person who answered my query to the *Enquirer* seems to think it's just a matter of taste or editorial discretion. The paper thinks the wrong-size dash fits the columns better. Actually, the floating en dash fits worse.

Neither the *Wall Street Journal* nor the *New York Times* exhibits this error. The *Boston Globe* is correct, as are most newspapers and magazines. Though

some graphic designers will take liberties—maybe a 3/4 em—the original is best. The full dash signals a break, not a hiccup.

Why the big deal? Well, it's tough enough to teach (or learn) correct English without daily exposure to a constant drumbeat of errors.

### A Mystery

Some lawyers continue to put Hamilton County, Ohio, *ss.* on affidavits and other documents. Why? Does anyone even know what it signifies? Does it mean “sovereign state”? That wouldn't make sense if English lawyers started it, which they did.

Bryan Garner, in a book we all must keep on our desk, *A Dictionary of Modern Legal Usage* (2nd Ed. 1995), solves the puzzle. People have suggested different origins: 1) an abbreviation for the word *scilicet* (to wit); 2) a representation of the gold letters hanging from the chain of the Lord Chief Justice.

But Garner discovered that it's “simply a flourish, deriving from the Year Books—an equivalent of the paragraph mark: ‘¶.’” It was to set off each paragraph of a court record. But a formbook writer put it into a form, and we have mindlessly been repeating the error for 900 years. Oh, well.

### Spellcheck Catches Two Lawyers

A recent brief told our court that an alleged car thief had gotten the car from a “dope *feign* named Greyhound.” *Feign* is a word, but not the one the attorney wanted, which was *fiend*. The other side copied the error, also referring to the “dope *feign*.” Then, reading the trial transcript, we noticed that the court reporter started it. That is the first time I've seen Spellcheck catch three people with one word.

### Readability

I always show the readability scores for the column. Statistics for this column: 14 words per sentence, 6% passive voice, and grade level 7.6. ■



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