The wonderfully versatile em-dash

We all know that legal writing could benefit from more periods. A strong contender for the second most neglected punctuation mark in legal writing is the em-dash, the long dash. You can often go for pages in opinions and briefs—or sometimes for the entire document—without seeing one. Writers who forgo it are denying themselves a useful and versatile device.

The em-dash can be used at the beginning of a sentence (as in *Teamwork—that's what we need*), but it most commonly appears at the end of the sentence or as a pair in midsentence. It can be used to provide structure to a lengthy sentence, to tuck an aside in the middle, to add emphasis, or to do any combination of these. What it sets off may explain, expand on, qualify, clarify, or restate—almost anything, really. It can replace a comma or commas, a colon, parentheses (with more emphasis, of course), and occasionally even a period. (*Teamwork is what we need. ~~And~~ —and to make that happen, we must . . . .*)

If you're concerned that em-dashes are too informal for legal writing, they are not too informal for justices of the United States Supreme Court, all of whom use them. Justice Kagan (seemingly the most prolific user), in *Chiafalo v. Washington*, 140 S. Ct. 2316, 2326 (2020): "Begin at the beginning—with the Nation's first contested election in 1796." Nor are they too informal for the United States federal court rules, which use them liberally. Federal Rule of Civil Procedure 2: "There is one form of action—the civil action." In fact, the very guidelines for drafting those rules recommend them. https://www.uscourts.gov/sites/default/files/guide_0.pdf (second edition forthcoming) § 2.4(C)(2). So do leading authorities on legal writing:

- Bryan A. Garner, *The Winning Brief* (3d ed. 2014), at 372: "[Dashes] are genuinely useful—even indispensable—to the writer who cares about rhythm, variety, and emphasis."
- Ross Guberman, *Point Taken: How to Write Like the World's Best Judges* (2015), at 210: "The em-dash has long been a favorite of great writers, whether legal, judicial, or otherwise."

A few notes before getting to the examples. First, the other dash, the shorter en-dash, is used primarily in ranges (2020–2021, pages 150–52) and to show equal or closely related pairs (bench–bar conference). Second, there's no hard-and-fast rule on whether to add a space on each side of an em-dash; just be consistent. (I used spaces in the examples that follow so as not to crowd the strike-throughs.) Third, avoid using three or more in a sentence; at a glance, it may not be apparent which two are paired. Finally, don't use so many that they draw attention to themselves. We grant that privilege to Emily Dickinson only.

I gathered the sentences below by skimming some opinions. (Confession: I found more dashes than I had expected to find.) None of them can in any way be considered wrong or even deficient. Still, you can judge whether the em-dashes improve them, even if just a bit.

EXAMPLES

[*Note to readers*: For fun, I'll send a free copy of *Seeing Through Legalese: More Essays on Plain Language* to the first two people who send me the full stage names of the blues masters whose last names I've used in the examples (replacing the actual names in the cases). I'll settle for five of the seven. **kimblej@cooley.edu**.]

Defendants summarily assert in their motion — without any further argument or analysis — that "the alleged statement is rank hearsay, which is totally inadmissible, and as such, simply not material."

James has already served a lengthy sentence — almost twelve years — which surely "reflect[s] the seriousness of [his] offense, and promote[s] respect for the law."

Neither of those officers — individually or combined — exercises sufficient direction and supervision over APJs to render them inferior officers. [No punctuation in the original.]

Unlike the District Court, however, we conclude that the Amended Complaint satisfies this less stringent standard — albeit just barely — by alleging facts that plausibly show a reasonably close resemblance between the plaintiffs and a comparator who received more favorable treatment from the defendants.

Plaintiff's principal argument — that he showed the officers a paper copy of his "permanent" accommodation from 2003 — does not change matters. [Oddly, the first dash was in the original but not the second one.]

The text of the guideline — along with the clear congressional purpose in the First Step Act of removing the BOP from its gatekeeping role — led this Court to its conclusion.

Plaintiff explains that Mr. Harpo made essentially the same statements recanting his testimony on three separate occasions to two different people — first to Mr. Reed, in Ms. Tharpe's presence, in 2000, and two more times to Ms. Taylor, in 2002 and 2006 — and that this frequency lends credibility to the inference that Mr. Harpo's earlier statements were coerced.

While Burnett's criminal history includes at least three prior violent felony convictions — including: robbery, assault, and unlawful use of a weapon — as well as multiple burglary convictions, he has not had any disciplinary issues while incarcerated. [The colon after *including* is unnecessary.]

True, Mr. Morganfield had survived a motion for summary judgment, but the motion had been limited to the exhaustion of administrative remedies — an issue substantially different from, and far less complex than, establishing deliberate indifference in a case involving a mentally ill inmate.

Accordingly, this Court finds that this statement could be considered potential exculpatory evidence — and thus it is material.

Despite this command, the Sentencing Commission released its only policy statement related to compassionate-release motions in 2006 — over two decades after § 3582(c) was enacted.

This is an incorrect interpretation of these two orders. ~~T~~the Court did not issue inconsistent rulings.

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