



Welcome to the re-introduction of a favorite feature on good legal writing. If there are writing topics you'd like to see covered, write to arizona.attorney@azbar.org

Visual Persuasion Through Punctuation

Dear readers, I've lied to you.

I told you that my favorite piece of punctuation is the semicolon. I do harbor fond feelings for the semicolon and deploy it frequently; my heart, however, belongs to the em-dash.

Unfortunately, we often harm those we love. Because I so favor the em-dash, I abuse it. You may have noticed that I frequently employ the em-dash, instead of commas or parentheses, to set off independent matter in the middle of the sentence. But the em-dash—like many techniques we use to focus our reader's attention—loses its impact through overuse. Blinded by my enchantment with this powerful piece of punctuation, I sometimes neutralize its magic.

What is an em-dash? Also called the "long dash," it is just that: a long dash, as wide as the font is tall (as opposed to the en-dash, which is longer than a hyphen and shorter than an em-dash, and which is used to punctuate numeric ranges or relationships between words). When you use a pair of em-dashes, they highlight the text they enclose. A single em-dash at the beginning or end of a sentence behaves like a more emphatic version of the colon, drawing your reader's eyes to the word or phrase that precedes or follows it. The em-dash is the gauzy slow-motion shot of the punctuation universe. It creates a visual pause in your text that demands your reader's attention. Use it too much, however, and you train your reader to ignore it. It's the em-dash that cried wolf. You deprive it of its drama.

Apparently, few attorneys share my em-dash addiction: Matthew Butterick, author of the excellent *Typography for Lawyers*, says the em-dash is "underused in legal writing."¹ Although you should not overuse the em-dash, by eschewing it altogether you may be missing an opportunity to enhance your writing's persuasiveness. Just look at the visual impact the em-dash delivers:

- Ms. Jones—like the plaintiff in *Petruchio*—failed to exhaust her administrative remedies before filing her complaint.
 - In what Ms. Benes described as a "minor miracle," she received no complaints whatsoever about Mr. Sheffield in his two years at the school—not from students, and not from parents.
 - In fact, the prosecutor's actions helped to further an injustice the grand jury system is designed to prevent—overzealous prosecution.

So when is it grammatically correct to use the em-dash to add a dash of drama? Although you can substitute the em-dash for a colon, as I do in the last two examples above, my favorite way to use the em-dash in formal legal writing is in pairs. Use two of them to set off an important interruption in a sentence. For example, in the majority opinion in *Gideon v. Wainwright*, Justice Black chose em-dashes to underline a conclusion the Court would reconsider:

- "The fact is that, in deciding as it did—that 'appointment of counsel is not a fundamental right, essential to a fair trial'—the Court in *Betts v. Brady* made an abrupt break with its own well considered precedents."

The long visual break that the em-dash creates isolates the key word or phrase, drawing your reader's eyes to it. By contrast, parentheses cloak that phrase, minimizing its importance:

- The fact is that, in deciding as it did (that "appointment of counsel is not a fundamental right, essential to a fair trial) the court in *Betts v. Brady*...


Commas serve as the "neutral" form of punctuation in this situation, neither emphasizing nor diminishing:

- The fact is that, in deciding as it did, that "appointment of counsel is not a fundamental right, essential to a fair trial," the court in *Betts v. Brady*...

Note that some authorities counsel us to use parentheses only rarely in formal legal writing—after all, if it's unimportant, it probably shouldn't be in your brief or motion—but experts from Bryan Garner to Joseph Kimble to Richard Wydick not only countenance but recommend the em-dash.

You also can use em-dashes to set off a phrase that contains multiple commas:

- In all four of the key cases—*Myers, Gibson, Tuller* and *Escalante*—the court found that the defendant failed to meet the burden of proof.

My best advice, though, is this: Stop and think before you choose parentheses, commas or em-dashes to punctuate an aside. Consider whether the interrupting word or phrase is something you want to emphasize, something you want to diminish, or neither. Commas should be the default: If you neither want to showcase nor subordinate an interruption, enclose it in commas. If you seek to highlight it, use em-dashes. If you wish to minimize it, use parentheses. Punctuate thoughtfully—but not too energetically—and you'll enhance the visual persuasive power of your writing. 

endnotes

1. MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS* 49 (2010).



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