



FROM THE DESK OF THE WRITING SPECIALIST

## Rolling Off the Tongue: Structuralist Legal Writing and Keith Richards

Justin R. Kishbaugh M.F.A., Ph.D.

*Associate Director of Academic Success*

*Professor of Writing*

*Roger Williams University School of Law*

Published: September 1, 2020

*“This is where they got it wrong with ‘this rock’ and ‘that rock.’ It’s got nothing to do with rock. It’s to do with roll.” –Keith Richards<sup>1</sup>*

The Rolling Stones are one of the greatest rock and roll bands of all time—maybe *the* greatest—and have been producing music and delighting fans for over 55 years now. Yet, while Mick Jagger receives the most attention for his contributions, he is only one half of the Jagger/Richards partnership responsible for creating such songs as “Satisfaction,” “Jumpin’ Jack Flash,” “Sympathy for the Devil,” and “Gimme Shelter”—to name only a few. The duo, also known as “The Glimmer Twins,” often share duties, but their process tends to consist of pairing Mick’s lyrics with Keith Richards’s music. Thus, in the classic dichotomy of form and content, Keith supplies the form for Mick’s content and, in doing so, becomes an excellent role model for professors and practitioners of legal writing. Like Keith, legal writers should recognize that, even though the content tends to receive the attention, the form not only provides the foundation for that content but also, through structure and sequence, shapes it in a manner that allows it to participate in and sometimes even *become* the meaning produced by that content.

---

<sup>1</sup> KEITH RICHARDS, LIFE 244 (2010).

As with any Rolling Stones song, form and content are both important in legal writing. But, also like those songs (and the focus of those who listen to them), law schools and legal writing instruction itself seem to focus more on content than form. Of course, the preference for law in a law school makes sense, but I think most law professors and practicing lawyers would admit that the ability to clearly communicate one's understanding and arguments regarding the law is as important as actually understanding that law and creating those arguments in the first place. To that end, I often hear versions of the familiar refrain that a law professor's job is less about having students memorize the law and more about teaching them how to *think about* the law or "think like a lawyer." Underlying such an approach, though, is the implicit acknowledgement that the form of one's thinking is as important as its content.

What Keith engages in instinctively—and what I am arguing legal writers need to practice consciously—is essentially a matter of structuralism. Without getting lost in literary theory, structuralism, in a very basic sense, argues that texts (and I am including music within that category) create meaning through patterns, and, therefore, if one can discern the pattern that creates a specific meaning, that person can then create and replicate that meaning. As the band member tasked with establishing the formal shape of Stones' songs, Keith must identify and create the pattern for producing the particular type of meaning appropriate for the content of that song. As legal writers, then, we too can benefit from recognizing that our texts' structural arrangement plays a significant role in the meaning generated by those texts. And if we learn to discern and manipulate those structures accordingly, that meaning will not simply sit atop that structure but will actually become the structure or substance of the text itself.

## I. Find your rhythm by letting genre dictate structure

To engage in this structuralist approach to legal writing, we, like Keith, should understand the importance of building up a text from its base rather than immediately attempting to present a unified surface. While almost all of us recognize Keith as a—if not *the*—guitar player for the Rolling Stones, fewer of us recognize him as primarily a rhythm guitar player. That distinction is important because it means that, rather than specializing in the improvised flourishes and solos that tend to get most listeners' attention and from which most guitar players' fame originates, Keith provides the song with a discernable shape by creating and supplying the theme from which that lead varies. Not without a hint of irony, then, legal writers would best follow Keith's lead by focusing on the rhythm more than the lead. More specifically, those legal writers should first identify and then establish the rhythmic or foundational structure that directs and gives shape to the entire text and the sub-patterns within it and then build those sub-patterns in their appropriate sequence on that foundation rather than extemporaneously attempting to manage all those layered tiers at once. Essentially, I am urging all writers—

but especially legal writers—to build and work from an outline before beginning to write. But the outline I am proposing understands and works according to the tiered and hierarchical nature of the structural elements that establish meaning-making patterns within a text.

Generally, the preferences of one's audience and presenting one's content with clarity should be, in that order, a writer's primary allegiances. Because those two criteria are variable and often nebulous, though, writers can most consistently determine the appropriate foundational structure or outline for their texts by determining the genre within which they are writing. For Keith, the decision as to whether a particular song should follow the patterns of a country, rock and roll, folk, blues, or pop structure helps him determine the type, number, and sequence of sub-structures such as intros, verses, choruses, bridges, and outros. Likewise, for legal writers, determining whether the content they need to express is most appropriately delivered as a legal memorandum, appellate brief, demand letter, or law review article will also help them determine the type, number, and sequence of necessary subsections.

For instance, we are all well aware that (at least for law students) a legal memo consists of some variation of the TRAAC or CREAC structure. We also seem to support the notion that students' awareness of that macro structure helps them differentiate between types of information and their purposes so those students can then arrange that information into appropriate sections and, thereby, establish the foundational pattern for meaning making in that text. Yet every genre has its own particular conventions that also dictate the number, type, and sequence of its component parts. If we would teach students to discern those formal conventions even as close to as much as we hold them responsible for identifying their content, we would help those students not only clarify and present their understanding of that content but also learn how to assess the expectations of a given genre so they, as legal writers and thinkers, would always be prepared for and capable of both creating and decoding the concomitant meaning-making patterns of any text.

## 2. Chord patterns: defining your paragraph structure

After determining the appropriate genre for one's content and its macrostructure of major sections, writers should turn their attention toward the structure and patterns of the paragraphs that make up those sections. Again, for Keith, that process involves determining the chord patterns for those substructures of verses, choruses, bridges, etc., and, although each song contains its own unique patterns, the bars or duration of those sections are usually grouped into multiples of four. For the legal writer, the process for constructing paragraphs is quite similar. While each paragraph has its own unique shape, the basic pattern of a paragraph can often be determined by its purpose. Thus, writers of legal memos tend to know that paragraphs explaining rules (also known as "Rule Explanation" paragraphs or "REs") tend to or *should* conform to some variation of the following pattern:

**Topic sentence****Precedent Case One:**

- Holding
- Facts
- Reasoning

[Transition]

**Precedent Case Two:**

- Holding
- Facts
- Reasoning

And paragraphs that apply those rules to the case at hand (“Rule Applications” or “RAs”) tend to take the following shape:

**Topic Sentence****Comparison to Precedent One:**

- Fact to Fact
- Holding/Reasoning to likely or desired H/R:

[Transition]

**Comparison to Precedent Two:**

- Fact to Fact
- Holding/Reasoning to H/R:

Even paragraphs that are not subject to such strict genre conventions have a basic structural form to which they abide. For instance, I tend to rely on the PEAS structure for body paragraphs. According to that acronym, a body paragraph should supply the following information in the following order: Point (or topic sentence), Evidence (concrete detail), Analysis (of detail), and So What? (the topic’s pertinence to the current discussion). Regardless of which pattern the author employs and despite the seemingly unnecessary rigidness and repetitiveness of those patterns, they force their authors to slow their stream of consciousness and identify, parse, and group the individual components of their thoughts before attempting to capture and present them in clear and concise prose. Moreover, such a process is particularly important for law students who, from the minute they begin their studies, are immediately tasked with simultaneously becoming both graduate-level thinkers and writers.

### 3. Creating “riffs” with sentence patterns

After considering the appropriate pattern for their paragraphs, legal writers should turn their attention to their sentence structure. With Keith, sentences are equivalent to the “riffs” for which he is so well-known that he is often referred to

as “The Human Riff” or, in a pun playing upon his name and accent, “Keef Riff-hard.” A riff is essentially a repeated musical phrase that often defines its song’s structure and, with Keith, those riffs are not only raw and forceful but also relatively simple and repetitious. Once more, then, legal writers, and especially law students, would do well to learn from Keith’s example by keeping their sentences simple and, at least to start, repetitive in structure. Regardless of the craft or discipline, those new to it tend to mistake “confusing” for “sophisticated,” which is certainly the case with writers. In reality, though, a good writer makes complex ideas seem simple whereas a bad writer makes simple ideas seem complex. A writer’s primary goal should be clarity of expression, and, as such, I preach to my students that their first drafts should consist mainly, if not completely, of simple, active-voiced sentences that contain both a subject and verb, in that order, as close together as possible, and at the beginning of that sentence. I want my students to write straight sentences: actor, action, and, if appropriate, receiver of action. Then, once they are certain that every one of their sentences clearly expresses its content, those authors can go back and combine those simple sentences into compound, complex, or compound-complex sentences to add some variety to the rhythm to their prose.

On those occasions where the appropriate sentence pattern is a bit more complex, I also provide my student writers with a template so they can focus on clarifying that sentence’s content while also minimizing its connective textual tissue. In the RE and RA paragraphs discussed above, students tend to have trouble composing both the topic sentences for those sections and the RA sentences that contain their analogical reasoning. The topic sentences are difficult because they require their authors, who generally still do not fully understand the law or how to apply it, to cut through the possibly relevant information and identify the few specific details that actually matter to *their* argument and then present those details in a clear and direct sentence. The main issue with the analogical reasoning sentences, however, lies in the amount of information those sentences need to contain while also remaining well written. To address those issues, I add the following sentence templates to my RE and RA paragraph templates:

**RE:**

**Topic sentence:** A [general actor (e.g., store owner)] *is/does/has/takes or is not/does not/have/take* [element (e.g., reasonable suspicion)] *when* [generalized facts (e.g., a shopper conceals unpaid-for items on her person)]

**Precedent Case One:**

- **Holding:** *The court in* [Precedent One Case Name] *held* [general actor] *was/was not or did/did not have/take* [element]...
- **Facts:** *...when* [Facts].
- **Reasoning:** *The court reasoned that...*

[Transition: *Similarly/Alternatively*]

**Precedent Case Two:**

- **Holding**
- **Facts**
- **Reasoning**

**RA:**

**Topic Sentence:** [Specific Actor (Mr. Waterford)] *is/did/had/took or is not/did not have/take* [element (reasonable suspicion)] *by/because/when* [specific facts (Ms. Caravaggio placed unpurchased items in her friend's hooded baby stroller)]

**Comparison to Precedent One:**

- **Fact-to-Fact Comparison:** *Like the* [Actor from RE Precedent One] *who/that* [specific facts], *here,* [specific actor from your case] [specific facts].
- **Holding/Reasoning to H/R:** *Un/Like the court in* [Precedent One] *that reasoned* [element] *was/not met because..., the Court here will likely hold* [element] *was/not met because...*

[Transition: *Similarly/Alternatively*]

**Comparison to Precedent Two:**

- **Fact-to-Fact Comparison**
- **Holding/Reasoning to H/R**

By giving my students very basic sentence structures that are prearranged into the appropriate syntactical pattern and contain only the words necessary to connect the elements of a legal analysis, I allow those students to focus on clarifying their understanding of that content while also practicing clear and efficient writing and hopefully developing the muscle memory to do so on their own in the near future.

## 4. Stay in tune by simplifying word choice

The final textual structure that writers should carefully consider and intentionally pattern is the words themselves. Here, Keith Richards again acts as a role model because he is known for deliberately limiting the notes available to him. More specifically, Keith writes and plays many of his songs on a five-string guitar set to an open G tuning. Keith himself explains that “[a]n ‘open tuning’ simply means the guitar is pretuned to a ready-made major chord,”<sup>2</sup> and “the majesty of the five-string open G tuning for electric guitar is that you’ve only got three

---

<sup>2</sup> *Id.* at 242.

notes—the other two are repetitions of each other an octave apart. It’s tuned GDGBD.”<sup>3</sup>

Unlike Keith, novice writers—and legal writers especially—often believe good writing involves slathering one’s text with modifiers like adjectives and adverbs. The truth, however, is really quite the opposite because those words end up superficially tinting that text with authorial intention. Rather, good legal writing, at least in terms of word choice, relies on nouns and verbs because they are the only types of words that really make meaning and, thus, present a seemingly objective reality. If, for instance, we take an admittedly reductive look at the other major parts of speech, we find they serve those nouns and verbs: adjectives describe nouns, adverbs describe verbs, pronouns replace nouns, prepositions locate nouns and verbs in space and time, and conjunctions simply link nouns and verbs and groups thereof. Moreover, the choice between abstract and concrete nouns and verbs is often the most persuasive choice for a legal writer because an author can make favorable facts tangible through concrete nouns and verbs or generalize unfavorable facts until they become favorable (or at least neutral) through abstract nouns and verbs. Nouns and verbs, therefore, are the essential elements or building blocks of writing, and the would-be persuasive legal writer would do well to strip them of all unnecessary adornment so they can do the work of which they are capable and for which they were intended.

## 5. The Richards’ approach to designing legal writing assignments

As professors, we can also learn from Keith’s structural approach to songwriting by creating a series of smaller and more focused writing assignments wherein each requires the student to build or add the appropriate structural layer to their text. I am sure that, as writing professors, we all include an element of revision in our assignments. Yet, in my experience, the typical writing assignment involves students writing and submitting a complete draft or a draft of a section, receiving feedback on that submission, and then using that feedback to revise and resubmit. Well-meaning as that process may be, it essentially asks students—many of whom are unfamiliar with the many layers of patterned meaning in a text—to straddle those tiers and intuitively weave them into an internally consistent and complete text.

To return to the Keith Richards analogy, such a practice is akin to asking students to play both rhythm and lead simultaneously when they likely do not know the difference between those two roles or how to accomplish either on its own. Moreover, when we offer feedback that spans all those structural layers and identifies every error or possible area for improvement in that text, the students who most need that help and, therefore, receive the most feedback are also the ones

---

<sup>3</sup> *Id.* at 243.

who are least likely able to categorize and prioritize that feedback for themselves. As a result, those students' revision process ends up mimicking their writing process in that it does not distinguish between the structural elements that comprise it. Those students then end up creating more work for themselves by addressing surface-tier issues before making foundational adjustments that ultimately render useless those previous revisions. But the even greater danger is that the weakest students, who are likely already anxious and doubtful about their writing ability, find themselves faced with a virtual sea of corrections and, due to their inability to categorize and prioritize that feedback, become so overwhelmed that they simply give up.

If we, instead, build a series of smaller assignments that, like Keith's approach to songwriting and playing guitar, begin with the foundation or outline and then add each subsequent textual layer in turn, we would teach students to follow a writing process that distinguishes between a text's structural elements and prioritizes those that most pervasively permeate that text and affect its meaning to the greatest degree. Moreover, such a series of assignments would establish a sequence for our grading and feedback that would allow us to prioritize the type and, thus, minimize the amount of feedback we offer on any given assignment while also making certain that the amount of revision each tier receives directly corresponds to its importance to that text.

Of course, we all appreciate the skilled soloists who can intuitively and immediately break from the pattern or adjust it to meet the needs of a particular occasion or express their own thoughts and emotions, but we should recognize that the ability to work outside of that pattern comes only from working within it so repeatedly as to internalize it. Frequently, we refer to those who are most skilled at their craft as finding or getting into a "groove," which (not incidentally) not only points to the material form of a vinyl record but also implies the ability to immerse one's self in an activity to such a degree as to be able to perform it without much effort. What gets lost in that idiom, though, is that a groove is something that is worn in over time through repeated action. In that way, then, Keith Richards seems as perfect a role model as any for a structuralist approach to the writing process because, as a songwriter and musician, he relies on the repetition of established and layered patterns to provide the formal foundation for the content of a Rolling Stones' song.

In *The Elements of Style*, the first piece of advice Strunk and White offer in their "An Approach to Style" section is "place yourself in the background," and they predicate that advice on their belief that if one prioritizes developing their craft over receiving attention for it, that craft will be of such quality as to deserve attention.<sup>4</sup> As professors and practitioners of legal writing, we could all learn from Keith's willingness to literally stand in Mick's shadow and choose to play rhythm instead of lead because he recognizes that the meaning produced by one's content

---

<sup>4</sup> WILLIAM STRUNK JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 70 (4th ed. 2000).

depends on its form—and appropriate form is built in layers or tiers from foundation to foreground or from substance to surface.