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Plain Language for Lawyers

A Legal Writing Seminar

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Table of Contents

1. Plain Language and the Thousand Different Types of Legal Writing 3

2. What Judges (and Other Legal Readers) Have to Say About Plain Language and Legal Writing 6

3. How to Make Language Plain (Without Losing Your Mind) 14

4. Before and After Examples 24

5. Tips for Editing and Proofreading 34

6. References and Resources 40

7. About the Presenter 42

1. Plain Language and the Thousand Different Types of Legal Writing

Many lawyers fall into bad habits when they write. They use surplus words, nominalizations, and wordy constructions.[1] Some lawyers believe that the more complex the language, the more thoughtful the writing will be.[2] But that is not the case. Plain language is easier to read and easier to understand. Readers strongly prefer it. And using plain language in legal writing "would greatly improve the image of lawyers."[3]

The problem of writing in plain language is not new. A federal government publication from 1966 was called "Gobbledygook Has Gotta Go." The book stated:

> It's past time government writers realized that a revolution has taken place in American prose, a revolution that started years ago and is operating today at fever pitch. Newspapermen, magazine writers, and fiction writers have joined in this revolution that demands simple, concise, clear prose. But not so, government writers! The flossy, pompous, abstract, complex, jargonistic gobbledygook that passes for communications in government "has gotta go!" It's too out-of-date to renovate; it's too expensive to tolerate.[4]

There have been many attempts to break lawyers and others of their bad writing habits. In 1998, President William J. Clinton issued an executive order stating that the "Federal Government's writing must be in plain language."[5] The order noted that using plain language would "send a clear message about what the Government is doing, what it requires, and what services it offers."[6] The order also noted that using plain language "saves the Government and the private sector time, effort, and money."[7] And after that order was issued, many government regulations and publications were redrafted in plain language. Yet old habits die hard, and there was still a need for plain language in government writing.

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[1] Mark E. Wojcik, *Introduction to Legal English* 295 (3d ed. 2009).
[2] *Id.*
[3] Joseph Kimble, *Answering the Critics of Plain Language,* 4 SCRIBES J. LEGAL WRITING 81 (1994).
[4] *Gobbledygook Has Gotta Go* 5 (1966).
[5] William J. Clinton, *Memorandum to the Heads of Executive Departments and Federal Government Agencies,* 63 Fed. Reg. 31,885 (1998).
[6] *Id.*
[7] *Id.*

The efforts to bring plain language continue. The federal "Plain Writing Act of 2010" became law on October 13, 2010.[8] The purpose of the law was "to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use."[9] The Plain Writing Act also defined the term "plain writing" as "writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience."[10] Although that law imposed plain language requirements on government agencies, the law also stated that there would be "no judicial review of compliance or noncompliance with any provision" of the Plain Writing Act, and that the Act would not be enforceable by any administrative or judicial action.[11]

> There are many forms of plain language, not just one. What may be appropriate in one context may be inappropriate in another. And it takes time to develop the necessary sensitivity to the problems of your readers.[12]

Lawyers write all the time. It's what we do. And there simply is no end to the number of documents that a lawyer might be called upon to draft or revise. What kind of documents are we drafting? Professor Mary Beth Beazley tells her students at The Ohio State University School of Law to distinguish between legal writing and legal drafting. She tells them that "legal writing" is writing about the law – generally about how law applies to facts. Items that fit into that definition of "legal writing" include:

- Office memos and opinion letters (predicting how a court will apply law to facts);

- Some bar journal or law review articles (with varying analyses of how laws should apply to particular facts);

- Briefs to courts (arguing how a court should apply law to particular facts);

- Demand letters (including predictive or persuasive writing about how a court will apply law to facts);

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[8] Pub. L. No. 111-274, 124 Stat. 2861, 2861 (2010).
[9] *Id.* § 2.
[10] *Id.* § 3(3).
[11] *Id.* § 6.
[12] Michèle M. Asprey, *Plain Language for Lawyers* 12 (3d ed. 2003).

- Court opinions (explaining how law does apply to facts); and

- Complaints or indictments (asserting how the law does apply to alleged facts).

She also tells her students that legal drafting is law, and offers the following examples:

- Court orders and opinions (that articulate the law of a case – and beyond, due to stare decisis);

- Contracts (the law that governs a deal or a business relationship);

- Statutes, regulations, and constitutions (enacted laws that regulate designated people and activities in the relevant jurisdiction);

- Treaties and other international agreements (that may provide rights or obligations between states or international organizations);

- Wills (the law that governs the estate); and

- Jury instructions (the law that governs how the jury will decide that case).

Other specific types of legal writing and legal drafting would expand those lists further. We could add email messages to clients and other lawyers, posts on legal blogs, client newsletters, bar journal and law review articles, testimony for a legislative subcommittee, legal pamphlets for the public, legal guides for clients or the public, forms and formbooks, and even continuing legal education materials. But no matter what type of document it is, all readers of legal writing and legal drafting have similar needs. Your writing must be:

- Precise;

- Organized;

- Understandable; and

- Accurate

2. What Judges (and Other Readers) Have to Say About Plain Language and Legal Writing

Judges (and other readers) prefer plain language. They have advice about how to write in plain language, and why you should. And they have complaints about bad legal writing. This section includes a short survey of what judges have to say about legal writing, including excerpts from interviews conducted by Bryan Garner and published in *The Scribes Journal of Legal Writing.*

a. U.S. Supreme Court Chief Justice John G. Roberts, Jr.

> "The quality of briefs [filed with the U.S. Supreme Court] varies greatly. We get some excellent briefs; we got a lot of very, very good briefs. And there are some [briefs] where the first thing you can tell in many of them is that the lawyer hasn't really spent a lot of time on it, to be honest with you. You can tell if they'd gone through a couple more drafts, it would be more effective. It would read better. And for whatever reason, they haven't devoted the energy to it. Well, that tells you a lot right there about the lawyer's devotion to his client's cause, and that's very frustrating because we're obviously dealing with very important issues. We depend heavily on the lawyers. Our chances of getting a case right improve to the extent the lawyers do a better job. And when you see something like bad writing, the first thing you think is, "Well, if he didn't have enough time to spend writing it well, how much time did he spend researching it? How much time did he spend thinking out the ramifications of his position? You don't have a lot of confidence in the substance if the writing is bad."[13]

b. Justice John Paul Stevens

> "The most important thing is to be accurate and intellectually honest in your arguments and state them clearly . . . ."[14]

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[13] Bryan Garner, *Interview with Chief Justice John Roberts*, 13 SCRIBES J. LEGAL WRITING 5, 6 (2010).

[14] Bryan Garner, *Interview with Justice John Paul Stevens*, 13 SCRIBES J. LEGAL WRITING 41, 46 (2010).

"[Grammar] does matter. It really does. And it's perhaps unfair, but if someone uses improper grammar, you begin to think, well, maybe the person isn't as careful about his work, or his or her work, as he or she should be if he doesn't speak carefully. Grammar is really quite important."[15]

c. Justice Antonin Scalia

"To write well is to communicate well. To write poorly is to communicate poorly. It also matters because to the extent that lawyers don't write well, to the extent they abuse words, to the extent they use them incorrectly, they are making dull the tools of their trade, which is a terrible thing."[16]

"When you write well, you capture the attention of your audience much better than when you write poorly."[17]

d. Justice Anthony M. Kennedy

In response to a question about whether lawyers would do well to read more literature, Justice Kennedy answered that he tells his law clerks that "sometimes you can't write anything good because you've never read anything good."[18]

And on the subject of legalese, he said: "I think we have to be careful not to overuse it. In part, again, it's discipline. We might think we're saying something important when we're really not. It can be pretentious."[19]

e. Justice Clarence Thomas

On the problem of citing too many cases for a simple or obvious point, Justice Thomas said: "Some people can beat a dead horse

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[15] *Id.* at 49.
[16] Bryan Garner, *Interview with Justice Antonin Scalia*, 13 SCRIBES J. LEGAL WRITING 50, 50 (2010).
[17] *Id.* at 53.
[18] Bryan Garner, *Interview with Justice Anthony M. Kennedy*, 13 SCRIBES J. LEGAL WRITING 79, 82 (2010).
[19] *Id.* at 98.

until it turns to glue. And I think that at some point . . . come on, you don't have to give me 20 authorities for an obvious point. You can cite one case to say that statutory construction begins with the words of the statute. One case. Move on."[20]

In response to a question as to whether lawyers have "a professional obligation to cultivate their writing skills," Justice Thomas answered: "I think lawyers have a professional obligation, like we all do, to get better and better at our craft, and I think writing better is part of that."[21]

f. Justice Ruth Bader Ginsburg

"I think that law should be a literary profession, and the best legal practitioners do regard law as an art as well as a craft. Unfortunately, many lawyers don't appreciate the importance of how one expresses oneself both in the courtroom at oral argument, and most importantly in brief-writing."[22]

When asked to give her "two biggest tips" to brief-writers, Justice Ginsburg said: "First, be scrupulously honest because if a brief-writer is going to slant something or miscite an authority, if the judge spots that one time, the brief will be mistrusted – the rest of it. And lawyers should remember that most of us [on the U.S. Supreme Court] do not turn to their briefs as the first thing we read. The first thing we read is the decision we're reviewing. If you read a decision and then find that the lawyer is characterizing it in an unfair way, we will tend to be impatient with that advocate. My other tip is that it isn't necessary to fill all the space allotted. We allow 50 pages for opening briefs. In some cases, complex cases particularly, it may be hard to fit what you have to say into 50 pages. But in single-issue cases, most arguments could be made in 20 to 30 pages. Lawyers somehow can't give up the extra space, so they fill the brief unnecessarily, not realizing that eye-fatigue and

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[20] Bryan Garner, *Interview with Justice Anthony M. Kennedy*, 13 SCRIBES J. LEGAL WRITING 99, 120 (2010).
[21] *Id.* at 131.
[22] Bryan Garner, *Interview with Justice Ruth Bader Ginsburg*, 13 SCRIBES J. LEGAL WRITING 133, 133 (2010).

even annoyance will be the response they get for writing an overlong brief."[23]

g. <u>Justice Stephen G. Breyer</u>

"Without outlining, you don't know where you're going. People will read something, [but] they won't understand what the basic point is."[24]

h. <u>Justice Samuel A. Alito Jr.</u>

"I used to get . . . lots of briefs and draft opinions all full of dates. The dates were totally irrelevant. Why did you need to know that something happened on March 2, 2007? Now, of course, if there is a statute-of-limitations issue or something like that, then you have to put the date in, and the one date that you put in will stand out. But on such and such a date, such and such a motion was filed. Generally, it's of no importance whatsoever, and yet it complicates what you've written."[25]

"What makes legal writing more difficult than other types of writing is that very often you have to use a particular form of words because it's the legal term, because it's the language of the statute, because it's what was said in an opinion. And so in order to be precise, in order to avoid any impression that you're changing the law in any way, you are stuck reiterating these same phrases, which may be very cumbersome phrases. You can't try to develop a synonym or some alternative language; if you do that, it's going to introduce ambiguity into the opinion. And that makes it harder because in ordinary writing, of course,

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[23] *Id.* at 137.

[24] Bryan Garner, *Interview with Justice Stephen G. Breyer*, 13 SCRIBES J. LEGAL WRITING 145, 146 (2010).

[25] Bryan Garner, *Interview with Justice Samuel A. Alito, Jr.*, 13 SCRIBES J. LEGAL WRITING 169, 174 (2010). Mark Painter—a judge in Ohio and also in the United Nations—advises legal writers that "most dates are clutter" and that writers should "not fall into the habit of starting every sentence with a date." Mark Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* 35 (3d ed. 2005). If you do put in an exact date, it should signal to the reader that the date is particularly important. In many cases where a specific date is not important, you can use just the month rather than the specific date.

you wouldn't do that. You would try to boil down those complex phrases or find various ways of saying the same thing. You're limited in your ability to do that when you're writing an opinion or a brief."[26]

i. Attorneys Ordered to Pay $1000 for Wasting the Judge's Time

In addition to denying motions or dismissing cases, other courts have fined attorneys as much as $1,000 after taking "offense with the sloppiness and carelessness shown" in a motion.[27]

> Plaintiffs' long and generally incomprehensible opposition is frivolous and totally devoid of any semblance of colorable merit. "Deciphering motions like the one presented here wastes valuable chamber staff time . . . ." *In re King*, No. 05-56485, 2006 WL 581256 (Bkrtcy. W.D. Tex. Feb. 21, 2006). Moreover, the arguments raised in favor of Plaintiffs lacked any legal basis, thus, failing to advance Nogueras and Ramirez's clients' interests or bring them closer to their ultimate goal. Finally, the careless omissions in the citations to the record can only be deemed as culpable negligence on the part of the attorneys, as opposed to inadvertence, when considering the combined deficiencies of the opposition. The Court finds this kind of conduct should not be tolerated from practicing attorneys. Sanctions are thus appropriate and necessary to protect the parties, the public and the judicial process. A reasonable monetary penalty paid to the Court will sufficiently deter the repetition of such conduct, both by Nogueras and Ramirez, and other litigants as well.[28]

The court issued an order to show cause in writing why the two attorneys should not be required to pay $1000 each within 30 days of the order.[29]

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[26] *Id.* at 181-82.
[27] *Mendez-Aponte v. Puerto Rico,* 656 F. Supp. 2d 277, 290 (D. Puerto Rico 2009).
[28] *Id.* at 291.
[29] *Id.*

j. <u>A Judge in Texas Denies Motion for Being "Incomprehensible" and Says "I award you no points."</u>

A bankruptcy judge in Texas denied a motion because it was incomprehensible. The court said this:

> The court cannot determine the substance, if any, of the Defendant's legal argument, nor can the court even ascertain the relief that the Defendant is requesting. The Defendant's motion is accordingly denied for being incomprehensible.[30]

And in a footnote that made the order quite famous, the judge added this colorful language:

> Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison," after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance,
>
> > Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.
>
> Deciphering motions like the one presented here wastes valuable chamber staff time, and invites this sort of footnote.[31]

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[30] *In re King*, No. 05-56485-C, 2006 WL 581256, at *1 (Bankr. W.D. Tex. Feb. 21, 2006).

[31] *Id.* n.1. At least two other courts have cited the same quote. *Lopez v. Quarterman,* No. V-07-95, 2009 WL 1325715, *2 (S.D. Tex. May 12, 2009); *American Silver LLC v. Emanuel Covenant Communities*, 2007 WL 1468600, *4 n.27 (D. Utah May 17, 2007);

k. Judge Easterbrook: Lawyers "caught with their hands in the cookie jar" are also fined $1000.

Writing in plain language allows you to write shorter sentences. Attorneys who could not make their 70-page brief fit into a 50-page limit reduced the font size and line spacing. The clerk's office at the time did not catch the formatting change, but judges Posner, Easterbrook, and Coffey did. They fined the lawyers $1,000 with explicit instructions that they could not pass the fine along to their client.[32] The opinion by Judge Easterbrook said:

> The lawyers, caught with their hands in the cookie jar, have apologized and promised not to play the same trick on us again. Perhaps they have learned their lesson. . . . Lawyers must comply with the rules and our orders rather than hope to put one over on the court and to apologize when caught. The penalty for a violation should smart.[33]

l. Florida Judge Orders Lawyer to Hand Deliver a Copy of the Corrected Motion to His Client

A federal judge in Florida denied a motion for voluntary dismissal of a case because the attorney did not secure a stipulation of dismissal from the defendant, but also because the motion was "riddled with unprofessional grammatical and typographical errors that nearly render the entire [motion] incomprehensible."[34] The judge ordered the lawyer to "re-read the Local Rules and the Federal Rules of Civil Procedure in their entirety" and also ordered the attorney to "personally hand deliver a copy" of the court's order along with a marked-up copy of the motion.[35]

m. An Oral Admonition Might Be Enough Punishment in Cook County . . . But You Can Also Land on the Front Page of the Law Bulletin!

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[32] *Westinghouse Electrical Corp. v. National Labor Relations Bd.,* 809 F.2d 419, 425 (7th Cir. 1987).
[33] *Id.*
[34] *Nault v. Evangelical Lutheran Good Samaritan Foundation*, No. 6:09-cv-1229-Orl-31GJK (M.D. Fla. Sept. 15, 2009), available at http://images.abajournal.com/main_images/Glasser1.pdf
[35] *Id.*

Judges must also be able to rely on your research, and the ethics rules require us to disclose adverse precedent. Two attorneys in Chicago received an oral admonition from a federal district court judge in Chicago after they failed to point out directly adverse precedent. That was bad enough, but the lawyers also received front-page coverage in the *Chicago Daily Law Bulletin.*[36] The newspaper also reported that the case settled after the judge issued the order to show cause for failing to cite the adverse precedent.[37]

[36] Patricia Manson, *Kennelly Criticizes Lawyers for Violation,* CHICAGO DAILY LAW BULL., Jan. 22, 2013, at 1 ("A federal judge concluded that a public scolding was enough punishment for two attorneys who failed to mention controlling precedent in a brief filed on behalf of a client.").

[37] *Id.* at 22.

3. <u>How to Make Language Plain (without Losing Your Mind)</u>

Years ago, plain language had "a bad name among some lawyers."[38] But this bad reputation usually arose because those lawyers did not understand what plain language was. There were many misconceptions that writing in plain language meant writing things in such a simplistic way that the resulting text would be insulting to any intelligent reader. Plain language was thought to be "not 'dignified enough' for lawyers to use in legal documents."[39] There was also fear that abandoning time-tested formulas in favor of plain language in legal writing would lead to chaos in the courtroom. Some lawyers also thought that plain language was "some new kind of language, with a separate vocabulary from normal language."[40] It is time to put away all of these myths. "Writing in plain language is just writing in clear, straight-forward language, with the needs of the reader foremost in mind."[41]

Some rules for writing may apply even before you start writing:[42]

1. *Plan before you write.* Think about the task before you and be sure that you understand it. Even a few minutes of reflection on the task at hand may save you hours of research and writing.

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[38] Michèle M. Asprey, *Plain Language for Lawyers* 11 (3d ed. 2003).
[39] *Id.*
[40] *Id.*
[41] *Id.* at 12
[42] Martin Cutts, The *Plain English Guide: How to Write Clearly and Communicate Better* 9-10 (1996); *see also* Caryn R. Suder, *I Can't Believe I Didn't Catch That!,* ABA Student Lawyer Mag., Dec. 2008, at 17.

2. *Keep track of your research.* Have a sensible research strategy to keep track of the results of your legal research. Many researchers simply jump online to find a relevant case. They fail to make a written list of research terms, never recognizing that writing down a research term can help stimulate your thoughts on other relevant terms. That written list can also be a good checklist when you are consulting various sources of legal research.[43]

3. *Set aside time to write.* Our days are hectic and often interrupted. If you can block out time to write you are more likely to produce a better product.

4. *Set aside time to revise and proofread.* Many readers fail to budget time for this essential step. We have too many projects and too many deadlines to also set aside time to review something already written. But if it was important enough to write, it is important enough to review before you send it off.

[43] Mark E. Wojcik, *Illinois Legal Research* 8 (2d ed. 2009).

Here are some plain language guidelines for lawyers:[44]

1. *Learn What Your Computer Can Do.* Know how to use the "grammar and style" feature on your spellcheck. It can point out errors that your eyes alone might miss, and the "grammar and style" feature can help you cut down on passive voice and other common writing problems. But use these programs carefully. Recognize that the spill Czech pro gram might knot no when there is a reel miss steak in your writing.

2. Avoid throat-clearing clauses that add nothing to your sentences.

   Examples

   It is important to note that . . . .

   It should be noted that . . . .

   It is significant that . . . .

   It goes without saying that . . . .

   It is well established that . . . .

[44] This list of guidelines is compiled and adapted from several sources, including Michèle M. Asprey, *Plain Language for Lawyers* (3d ed. 2003); Martin Cutts, The *Plain English Guide: How to Write Clearly and Communicate Better* (1996); Bryan Garner, *Legal Writing in Plain English: A Text With Exercises* (2001); and Richard Wydick, *Plain English for Lawyers* (5th ed. 2005).

3. *Turn Nouns Into Verbs.* Look for nominalizations – trapped verbs – and set those verbs free. Look for words that end in –ion, –ance, –ence, or –ment for examples.

Examples

Admonition

Avoidance

Conclusion

Demonstration

Indication

Movement

Placement

Stipulation

4. *Be Clear.* Use words your readers are likely to understand.

5. *Sentence Length.* In most documents, the average sentence length should not exceed 20-25 words.

6. *Number of Sentences in Each Paragraph.* Have pity on your readers. In most documents, the average paragraph length should be three to seven sentences.

7. *Topic Sentences.* Introduce each paragraph with a topic sentence. This helps the reader understand what will be in that paragraph. It also helps you as a writer because you will organize your information more succinctly.

8. *Avoid Unnecessary Words.* Use only as many words as you really need.

9. *Use Separate Citation Sentences.* Put case citations in separate citation sentences rather than inside the sentence. And if the name of the court is obvious from the citation, you don't need to include the name of the court in the sentence.

Example

In *Yellow Book Sales and Distribution Company, Inc. v. Feldman,* 2012 IL App (1st) 120069, 982 N.E.2d 162, 171 (Ill. App. Ct. 2012), the Illinois Appellate Court stated: "It is well established that an agent of a disclosed principal is not individually or personally bound by the terms of the contract which he executes on behalf of the principle, where the agency relationship is known to the other party at the time of the contracting, unless he agrees to be personally liable." [82 words]

Becomes

"It is well established that an agent of a disclosed principal is not individually or personally bound by the terms of the contract which he executes on behalf of the principle, where the agency relationship is known to the other party at the time of the contracting, unless he agrees to be personally liable." *Yellow Book Sales and Distribution Company, Inc. v. Feldman,* 2012 IL App (1st) 120069, 982 N.E.2d 162, 171 (Ill. App. Ct. 2012). [54 words in sentence; 76 words in both sentences]

10. *Prefer the Active Voice.* The passive voice can put persons to sleep. Prefer the active voice (unless it hurts your client, or unless the actor is unknown or unimportant). A sentence written in the active voice often uses fewer words as well.

Example

The motion to dismiss the case was granted by Judge Hall. [11 words]

Judge Hall granted the motion to dismiss the case.

or

Judge Hall dismissed the case.

Examples of When You Can Use Passive

The documents were delivered yesterday. [Passive – it doesn't matter who delivered the documents]

A gun was fired. [Passive]

Mistakes were made. [Passive]

11. *Take Care with "Only."* Put the word "only" closest to what it modifies.

Example

The clerk delivered the motion yesterday.

12. *Tabulate*. Use vertical lists for complicated text.

Example

In deciding whether to pursue discovery under the Federal Rules of Civil Procedure or the Hague Evidence Convention, a trial court must balance the U.S. sovereign interest, sovereign interests of the foreign state that might be impacted by the discovery procedure used, the likelihood that the Convention procedures would be effective, intrusiveness of the discovery requests, the expense of transporting the witnesses, documents, or other evidence to the United States, specificity and relevance with which the requests are drafted, importance to the litigation of the documents or information sought, and the availability of alternative means of securing the information.

Becomes

In deciding whether to pursue discovery under the Federal Rules of Civil Procedure or the Hague Evidence Convention, a trial court must balance the following factors:

(1) the U.S. sovereign interest;

(2) sovereign interests of the foreign state that might be impacted by the discovery procedure used;

(3) the likelihood that the Convention procedures would be effective;

(4) intrusiveness of the discovery requests;

(5) the expense of transporting the witnesses, documents, or other evidence to the United States;

(6) specificity and relevance with which the requests are drafted;

(7) importance to the litigation of the documents or information sought; and

(8) the availability of alternative means of securing the information.

13. *Double Negatives.* Avoid double negatives; put your points positively when you can.

> "We don't need no education."
> (Yes, you do.)

14. *Punctuation.* Punctuate accurately to minimize reader distractions. Punctuation can also save lives.

> Let's eat grandma!
> Let's eat, grandma!
>
> A woman without her man is nothing.
> A woman: without her, man is nothing.

15. *Use Names.* Refer to persons and companies by name instead of calling them plaintiff-appellant.

16. *Used generic terms.* When describing earlier cases as precedent, use generic terms to describe persons and companies. This may also help you synthesize cases and rules of law.

17. DON'T USE ALL CAPITALS FOR HEADINGS BECAUSE THEY ARE HARD TO READ AND MANY READERS SIMPLY SKIP OVER THEM.

18. *And/or.* Don't use and/or. Decide which one you need.

19. *Avoid "Shall."* Delete every shall. It's an ambiguous word. If you mean "must" then say "must." If you mean "should" then say "should."

20. *Word-Numeral Doublets.* Avoid word-numeral doublets. They are no longer necessary.

Example

The defendant claims that he was driving fifty-five (55) miles an hour.

The defendant claims that he was driving 55 miles an hour.

4. Before and After Examples

a. Words and Phrases

Mark Painter, a judge from Ohio who later also served as a judge for the United Nations, advises writers not to start writing a brief or memorandum "until you have a succinct statement of what the case is about."[45] This statement, he says, must not exceed 50 to 75 words: "If you can't explain the case in 75 words, you do not understand it very well, and neither will your reader."[46] This chart contains phrases that commonly appear in various forms of legal writing but that can be eliminated or said in fewer words.

Before	After
A number of	Several [or state the number]
A period of two months	Two months
A period of a week	A week
A period of 24 hours	24 hours
A true and correct copy	A copy
Above-mentioned	[Omit or be specific]
Aforementioned	[Omit or be specific]
Aforesaid	[Omit or be specific]
All of the facts	The facts
An adequate number of	Enough
As a consequence of	Because
As a result of	Because
As well as	And

[45] Mark Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* 30 (3d ed. 2005).
[46] *Id.*

Asked the question of whether or not	Asked
At that point in time	Then
At that time	Then
At the present time	Now
At this point in time	Now
By virtue of	Because of, under
Called into question	Questioned
Clearly a violation of	Violates
Conduct an examination of	Examine
Consider the question of whether	Consider, decide
Decided to mention in response to this question	Answered
Despite the fact that	Although, despite
Did not include	Omitted
Does constitute	Is
Does not possess	Lacks
Due to the fact that	Because
During the course of	During
Expressly provides	Provides
Expressly states	States
Failed to include	Omitted
Failed to report knowledge about the existence of	Omitted
For and on behalf of	For

For the duration of	During, while, until
For the purpose of	For, to
Found a loophole with which to circumvent the truth	Lied
Gave further testimony that	Testified
Granted certification to	Certified
Granted the motion to dismiss	Dismissed
Has a duty to	Must
Has no power to	Cannot
Has the power to	Can, may
Held the belief that	Believed
If for any reason whatsoever	If
In a vehicle possessing motion	In a moving vehicle
In cases where	Where
In combination with	And
In conjunction with	With
In one of these instances	Once
In two of those instances	Twice
In order to	To
In order to prove	To prove
In order to show	To show
In order to successfully prove	To prove
In the absence of	Absent, without
In the event that	If

In the event that for any reason whatsoever	If
In the near future	Soon
In those instances where	Where
In view of the fact that	Because
Intentionally left out information concerning the fact that	Omitted
Is able to	Can
Is applicable to	Applies
Is entitled to	May, can
Is not able to	cannot
Is required to	Must
It goes without saying that	[Go without saying that!]
It is a requirement for the plaintiff to establish sufficient evidence to prove	The plaintiff must prove
It is important to note that	[Omit]
It is significant that	Significantly, [or omit the phrase]
It should be noted that	[Omit]
Left a doubtful impression in the mind	Left doubt
Made a payment of seven hundred dollars ($700.00)	Paid $700.00
Made a statement that	Said
Made its decision	Decided
Made the determination that	Determined
Made the observation that	Observed

Make a provision for	Provide
Make a stipulation to	Stipulate
Make an accommodation for	Accommodate
Make an application for	Applied
Make an arrangement for	Arrange
Not of sufficient gravity	Insufficient
Not sufficient enough to establish the fact that	Insufficient
Notwithstanding the fact that	Although
Offered testimony	Testified
Offered testimony in support of her case	Testified
On numerous occasions	Often, frequently, [or use a specific number]
On the grounds that	Because
On two occasions	Twice
Perform an investigation into	Investigated
Prior to	Before
Prior to the disbursement	Before payment
Produced evidence from a witness who stated in his testimony that	A witness testified that
Provide a description of	Describe
Rate of speed	Rate, speed
She also has the knowledge that	She knows
She honestly and truly believed	She believed

Stated during the hearing that	Stated, testified
Subsequent to	After
Take into consideration	Consider
The applicant carries the burden of proving	The applicant must prove
The city of Chicago	Chicago
The country of Canada	Canada
The court put considerable weight on the fact that	The court considered
The evidence concerning the above-mentioned issue	The evidence
The evidence presented at the hearing	The evidence
The first issue for the court to consider is whether	The first issue is whether
The first issue for the court to consider is whether or not	The first issue is whether
The second issue to consider is whether or not	The second issue is whether
The majority of	Most
The month of April	April
The rule is an indication that	The rule indicates
The state of Illinois	Illinois
The totality of the facts	The facts
The various legal difficulties she encountered	Her legal difficulties
This time also	Again

To supply an explanation that is satisfactory	To explain
Until such time as	Until
Very important	Important
Very unique	Unique
Was made arbitrarily	Was arbitrary
Which is required to	Required, necessary
Will argue that a distinction should be made based on the fact that	Will distinguish
Will be permitted to	May
Will make a good argument that	Will argue
Will need to prove	Must prove
Will serve as a warning to	Warn
With regard to	About, concerning

Exercises

It is a requirement of this bank commitment that the bank obtain the following documentation in conformance with the loan application from the borrower received by the bank.

It shall be the responsibility of the buyer to obtain all of the necessary documentation.

In *Yellow Book Sales and Distribution Company, Inc. v. Feldman,* 2012 IL App (1st) 120069, 982 N.E.2d 162, 171 (Ill. App. Ct. 2012), the Illinois Appellate Court stated: “It is well established that an agent of a disclosed principal is not individually or personally bound by the terms of the contract which he executes on behalf of the principle, where the agency relationship is known to the other party at the time of the contracting, unless he agrees to be personally liable.”

I am herewith returning the stipulation to dismiss in the above-entitled matter; the same being duly executed by me.[47]

The grounds of appeal announced on Monday state Justice Sifris erred in not finding Mr. Goldberg was wrong in failing to set aside the summonses.[48]

[47] http://www.illinoistrialpractice.com/2009/03/find-examples-of-bad-legal-writing-in-the-legalese-hall-of-shame.html
[48] http://www.loweringthebar.net/2013/02/quintuple-negative.html

5. Tips for Editing and Proofreading

Don't feel too bad if your writing includes a typo.[49] Justice John Paul Stevens has even said that there is "almost never a brief" filed with the U.S. Supreme Court in which he didn't find a typographical error.[50] "It's amazing," he said.[51] "Even though they're proofread over and over again, . . . errors are very common."[52]

Here are some tips to improve your editing and proofreading skills.[53]

1. *Budget Time for Editing and Proofreading*. If you don't plan to give yourself time to proofread, you won't do it. You'll hit "print" or "send" and simply be done with the document. And you'll be horrified by the mistakes you find later – or that are pointed out to you by opposing counsel, the court, or the client.

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[49] Any typos in these CBA CLE materials are, of course, intentional.
[50] Bryan Garner, *Interview with Justice John Paul Stevens*, 13 SCRIBES J. LEGAL WRITING 41, 50 (2010).
[51] *Id.*
[52] *Id.*
[53] Some items on this list are adapted from Debra Hart May, *Proofreading Plain & Simple* (1997), and Caryn R. Suder, *I Can't Believe I Didn't Catch That!,* ABA Student Lawyer Mag., Dec. 2008, at 17.

2. *Pick a Time When You're Alert.* You know when you're sleepy and you know when you're awake. Pick a time when you'll be at your best. "Proofreading requires energy and alertness."[54] Stay focused on the task at hand. Take a short break if you need one.

3. *Use the Computer Spell Check, Grammar, and Style Programs.* Look to see if your computer has a "grammar and style" option. You'll be delighted if it does. This is not the automatic proofreading that might underline a misspelled word as you type, but a separate program that you can use to offer specific suggestions to improve your writing. Remember, though, that it is only a computer program and that it won't always understand nuances in legal language.

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[54] Caryn R. Suder, *I Can't Believe I Didn't Catch That!,* ABA Student Lawyer Mag., Dec. 2008, at 17, 18.

4. *Proofread from Paper.* This is more important than you might imagine. If you proofread from a computer, your eyes will miss many errors. "This may be because the printed copy simply looks different or because there is greater contrast between background and type," says Caryn Suder.[55] Print out the document and experience it as your reader will.

5. *If You Cannot Proofread from Paper.* "If you must proofread on the screen, consider enlarging or bolding the type, changing the font color, or holding a straight edge up to the screen to prevent your eyes from wandering."[56]

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[55] *Id.* at 17.
[56] *Id.*

6. *Go Somewhere to Proofread.* You need an environment free from distraction if you're going to do this properly. If your desk poses any distractions, go somewhere else. Find a quiet room. Reconnect with the solitude of the law library. Make sure the room is comfortable – not too hot or too cold. And make sure you have good lighting.

7. *Read Your Paper Multiple Times.* Caryn Suder suggests reading once for content errors, once for organizational errors, a third time for formatting errors, and a fourth time for errors in punctuation, spelling, and grammar.[57]

[57] *Id.* at 18.

8. *Make a List of Specific Problems You Know You Might Have.* If you're writing about a statute, be sure that you're writing about a statute rather than a statue.

> *Example:* The Federal Statue provides that the "time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C.A. § 2244.[58]

9. *Read Your Paper Aloud.* Perhaps you should not read your paper aloud on the subway or in any other public area, but reading it aloud will force you to slow down and will increase the possibility that you will find an error or an awkward phrase. If you haven't tried this technique you are missing out on something – try it, it works.[59] You can try reading your paper to a colleague or a friend. And in some cases, you can read your paper aloud to your dog or cat. They probably won't have any meaningful feedback for you, but they'll be a good audience.

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[58] *Stuart v. Hobbs*, 2013 WL 608571 (W.D. Ark. 2013).
[59] Debra Hart May, *Proofreading Plain & Simple* 116 (1997).

10. *Have Your Computer Read Your Paper to You.* Some computers (and smart phones) have the ability to read documents aloud. If you have to listen to your paper this way, you may catch errors you might otherwise miss.

6. References and Resources

Books and Articles

Michèle M. Asprey, *Plain Language for Lawyers* (3d ed. 2003).

Matthew Butterick, *Typography for Lawyers* (2010).

Martin Cutts, The *Plain English Guide: How to Write Clearly and Communicate Better* (1996).

Bryan Garner, *Legal Writing in Plain English: A Text With Exercises* (2001).

Gobbledygook Has Gotta Go 5 (1966).

Almas Khan, *Opening Class with Panache, Professionalism Pointers, and a Pinch of Humor,* 20 Perspectives: Teaching Legal Res. & Writing 117 (2012).

Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (2006).

Joseph Kimble, *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* (2012).

Patricia Manson, *Kennelly Criticizes Lawyers for Violation,* Chicago Daily Law Bull., Jan. 22, 2013, at 1.

Debra Hart May, *Proofreading Plain & Simple* (1997),

Mark Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* (3d ed. 2005).

Wayne Schiess, *Better Legal Writing: 15 Topics for Advanced Legal Writers* (2005).

Caryn R. Suder, *I Can't Believe I Didn't Catch That!,* ABA Student Lawyer Mag., Dec. 2008, at 17.

Mark E. Wojcik, *Illinois Legal Research* (2d ed. 2009).

Mark E. Wojcik, *Introduction to Legal English* (3d ed. 2009).

Richard Wydick, *Plain English for Lawyers* (5th ed. 2005).

Cases

American Silver LLC v. Emanuel Covenant Communities, 2007 WL 1468600 (D. Utah May 17, 2007).

In re King, 2006 WL 581256 (Bankr. W.D. Tex. Feb. 21, 2006).

Lopez v. Quarterman, 2009 WL 1325715 (S.D. Tex. May 12, 2009).

Mendez-Aponte v. Puerto Rico, 656 F. Supp. 2d 277, 290 (D. Puerto Rico 2009).

Nault v. Evangelical Lutheran Good Samaritan Foundation, No. 6:09-cv-1229-Orl-31GJK (M.D. Fla. Sept. 15, 2009), available at http://images.abajournal.com/main_images/Glasser1.pdf

Blogs and Websites

Legal Writing Prof Blog
http://lawprofessors.typepad.com/legalwriting/

Scribes – The American Society of Legal Writers
http://www.scribes.org

7. About the Presenter – Mark E. Wojcik

Teaching

Mark E. Wojcik is a professor at The John Marshall Law School in Chicago, where he has taught Lawyering Skills for the past twenty years. He is also an adjunct professor in Mexico (at the Facultad Libre de Derecho de Monterrey) and in Switzerland (at the University of Lucerne Faculty of Law). He has also been an adjunct professor at DePaul University College of Law and Loyola University Law School in Chicago.

Over the past twenty years he has taught legal writing seminars and legal research seminars for law firms, government agencies, and bar associations.

Background

He received his Bachelor of Arts, *cum laude*, from Bradley University in Peoria, his Juris Doctor, *cum laude*, from The John Marshall Law School in Chicago, and an LL.M. in Trade Regulation from New York University School of Law.

He was an editor on *The John Marshall Law Review* and a competitor in international law moot court competitions. After graduation, he clerked for judges on the Nebraska Supreme Court and the U.S. Court of International Trade. He practiced customs and international trade law in New York before returning to teach in Chicago. From 1994-95, he served as Court Counsel for the Supreme Court of the Republic of Palau, during the year that Palau became in independent country.

Publications

His publications include ***Illinois Legal Research***, a state-specific legal research guide published by Carolina Academic Press. He is also the author of ***Introduction to Legal English,*** the first coursebook in the United States designed for lawyers and law students who speak English as a second language. He is a contributing author of the American Bar Association's ***Sourcebook of Legal Writing Programs.***

Bar Leadership

He is a board member and the Treasurer of Scribes – The American Society of Legal Writers.

He has chaired seven different sections of the **Association of American Law Schools,** including the **Section on Legal Writing, Reasoning, and Research.**

He served two terms on the Board of the **Legal Writing Institute** and helped create the LWI "One-Day Workshops" held around the country each year.

He is the founder of the **Global Legal Skills Conference**, which has been held three times in Chicago, twice in Mexico, twice in Costa Rica, and once in Washington, D.C. The next Global Legal Skills Conference will be held May 20-22, 2014 in Verona, Italy.

He has served as Publications Officer for the **American Bar Association Section of International Law**, and as chief editor of the *International Law News,* and as editor or co-editor of the *International Law Year in Review.* He is also the current Chair of the International Committee of the **ABA Tort Trial and Insurance Practice Section** ("TIPS").

He is a board member of the **International Law Students Association** ("ILSA"), which organizes the annual Philip C. Jessup International Law Moot Court Competition.

He is a member of the Board of Governors of the **Illinois State Bar Association** and served as ISBA Secretary. He is also a past member of the Board of Managers of the **Chicago Bar Association**.

He is a member of **Clarity,** an international organization dedicated to plain language and its teaching.

Other Activities

He is an editor on the **Legal Writing Prof Blog,** which was recently selected as the ABA Journal "Reader Favorite" for legal research and writing and was named in 2013 to the ABA Journal "Blawg 100 Hall of Fame." He is also an editor of the **International Law Prof Blog.**

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