

# Conciseness in Legal Writing

by Lisa Mazzie Hatlen

*"I have made this letter longer than usual, because I lack the time to make it short."*<sup>1</sup>

WHEN MY SON WAS IN TENTH grade, he had to write a six-page paper. I reviewed his four-page draft; it seemed complete. But the assignment was six pages (and no fudging with font size and margins). What could my son do but find more words, bigger words, and add sentences that said nothing more than what he had already said.

This tendency to fill the page with more and bigger words is common among law students and attorneys. Sometimes a writer is consciously verbose to reach a minimum page requirement; more often, the writer is trying to impress the reader.<sup>2</sup> Or the writer is, consciously or not, trying to hide that she doesn't understand what she wants to communicate.<sup>3</sup> Verbose writing muddies the message<sup>4</sup> and may confuse the reader.<sup>5</sup> For example, it's relatively easy to read the following passage quickly, but it's difficult to quickly grasp its meaning:

"And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably



Lisa Mazzie Hatlen, U.W. 1999 cum laude, Order of the Coif, is assistant professor of legal writing at Marquette University Law School, Milwaukee.

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Clear, concise communication is especially important in legal matters. So write tight. Here's how.

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result to municipalities in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the questions incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders' charters."<sup>6</sup>

In this 178-word sentence, the court in *Chase v. Kalber* took the long way to say six small words: "We made a mistake last time."<sup>7</sup>

Most of the things law students read are cases written like *Chase v. Kalber*.<sup>8</sup> Thus, many future lawyers subconsciously adopt a wordy style. Writing concisely takes conscious effort. It is achieved mostly through revising and editing one's own work, though with practice, one can draft with some degree of concision.<sup>9</sup> Some of the most common ways to be concise include the following:

- Omit needless words and phrases.

- Keep the subject, verb, and object close together at the beginning of the sentence.

- Use strong, precise verbs.
- Remove legal jargon.

- Replace certain nouns with verbs.

- Use active, not passive, voice.<sup>10</sup>

## Omit Needless Words and Phrases

It's easy to take a simple, easy-to-understand sentence and turn it into a rambling mess. It's harder to write (or rewrite) that sentence to express exactly what you mean. To keep sentences clear and easy to understand, eliminate needless words and phrases, redundant words, and words that are implied by other words.

Needless words and phrases are like "throat-clearing"—the "verbal tics that we use unconsciously as we clear our throats."<sup>11</sup> For example, the words *actually*, *really*, *virtually*, and *certainly* fall into this category, as do the phrases *it is important to note*, *it is significant that*, *it is obvious that*, and *it may be argued that*. Prepositions—such as *of*, *for*, and *to*—may be clues to extra verbiage. *An adequate number of* can be changed to *enough* without losing meaning. The phrases *for the reason that* and *to the effect that* become simply *because* and *that* (or *such that*), respectively. In some phrases, delete *of* and use the possessive. For example, *the negligence of the defendant* becomes *the defendant's negligence*.

Eliminate redundant words.<sup>12</sup> Writing "The plaintiff saw the two

twins at 11 a.m. in the morning, and both wore shirts that were red in color" unnecessarily doubles the sentence length. Instead, write "The plaintiff saw the twins at 11 a.m., and both were wearing red shirts." Some redundancies have been around since the early history of legal writing, when an English word was paired with a French or Latin word.<sup>13</sup> Examples include *due and payable*, *buy or purchase*, *cease and desist*, and *will and testament*; in each of these examples, one of the two words would suffice. Other common redundancies include *full and complete*, *true and accurate*, *each and every*, and *any and all*.<sup>14</sup>

Words implied by other words can be eliminated. For example, in an advertisement that promises a "free gift," the word *free* is implied (and can be cut), because a gift is something given at no cost. The following sentence contains several unnecessary words that can be cut because the words they modify imply them: "Do not try to predict future events that will completely revolutionize society, because past history shows that it is the final outcome of minor events that unexpectedly surprises us more."<sup>15</sup>

Here, the words *future*, *completely*, *past*, *final*, and *unexpectedly* can be eliminated. If we predict some event, we're certainly not predicting past events, and if something is history, it's in the past. A surprise is a surprise precisely because it is unexpected. Thus, this sentence can be shortened: "Do not try to predict revolutionary events, because history shows us that the outcome of minor events surprises us more."<sup>16</sup>

Other common phrases that be shortened by eliminating the implied word include *terrible tragedy*, *each individual*, *true facts*, and *consensus of opinion*.

### Keep Subjects, Verbs, and Objects Close Together

Readers instinctively look for the subject, verb, and object of a sentence to make sense of what they are reading. When the writer uses descriptive and modifying phrases or combines myriad ideas in one sentence, she runs the risk of separating these parts of speech, making her writing difficult to read. For example, in the following sentence the subject is *the partnership*, the verb

is *may buy*, and the object is *a bankrupt partner's interest*. But these key sentence parts are too far apart.

"If any partner becomes a bankrupt partner, the partnership, at its sole option, exercisable by notice from the managing general partner (including any newly designated managing general partner) to the bankrupt partner (or its duly appointed representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing the partner to become a bankrupt partner, may buy, and upon the exercise of this option the bankrupt partner or its representative shall sell, the bankrupt partner's partnership interest."<sup>17</sup>

To make this easier to read and understand, the writer needs to put the subject, verb, and object close together (preferably at the beginning of the sentence) and may need to make two or more sentences out of what was once one. Then she can add the other, undoubtedly important, information. For example: "The partnership may buy any bankrupt partner's interest. To exercise the partnership's option to buy, the managing general partner must provide notice to the bankrupt partner no later than 180 days after receiving notice of the event that caused the bankruptcy."<sup>18</sup>

### Use Strong, Precise Verbs

Concise writing wastes no words; the sentences snap. Verbs keep sentences moving. Some verbs are stronger than others; they precisely convey the intended meaning.

A sentence that uses lackluster verbs (like all forms of *to be*) is sluggish and wordy. Compare "Smith's case is an illustration of this point" and "Smith's case *illustrates* this point."<sup>19</sup>

### Remove Legal Jargon

Law is a specialized field with a specific terminology. A writer's use of legal terms suggests the writer is a member of the club. But legal jargon

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differs from legal terms of art. Jargon is unnecessary in legal writing; terms of art are indispensable. Imagine how much better the following sentence would be if the writer removed (and replaced with “the”) the word “said” – probably the most popular word in legal jargon: “That afterwards, the said Sheriff having duly made return of said writ with the report by him of said sale to said court, said sale was by said court confirmed and a deed of said premises ordered upon his payment of the purchase price aforesaid.”<sup>20</sup>

Legal terms of art, however, are necessary in legal writing. There is not much you can or should do if you have to write about *habeas corpus* or something that is *implied in fact*. But in most cases, you can dispense with legal jargon.

### Replace Certain Nouns With Verbs

The easiest way to lengthen writing is by turning good verbs into bad nouns. Such nouns are called nominalizations. For example, a lawyer might write, “The court made a decision that the document contained an explanation about the agreement of the parties.” This sentence contains two nominalizations: *decision* and *explanation*. The good verbs *decide* and *explain* became bad nouns. The rewritten sentence is: “The court decided that the document explained the parties’ agreement.”

Rid your writing of nominalizations by looking for words that end in *-ion*, *-ment*, and *-ability* and substituting the root verbs.

### Use Active, not Passive, Voice

Active voice describes a sentence that has a subject doing something: “The car smashed into Henry while he was riding his bike.” With passive voice, something is being done to someone or something: “While riding his bike, Henry was hit by the car.” Active voice is nearly always more concise than passive voice. However, when the actor is not important or when you want to

downplay the actor’s conduct, you may want to choose passive voice.

Finding passive voice in your writing can be tricky; fewer than “50% of lawyers can do it consistently.”<sup>21</sup> To spot the passive voice, look for a *to be* verb followed by a word ending in *-ed*. For example, “In 1998, only ten executives *were covered* by Article 12.”<sup>22</sup> To turn this into active voice, find the real subject (Article 12) and make it the actor: “In 1998, Article 12 covered only ten executives.”<sup>23</sup>

Many of these tips overlap; that is, if you look for a *to be* verb and change it to a stronger verb, you’ll likely also get rid of nominalizations, unnecessary words, or both. For example: “The prosecutor *is* in the process of *making a determination* of whether to charge Greene.”<sup>24</sup> You see the weak *to be* verb, two *ofs*, and a nominalization. By choosing a stronger, more precise verb, you also address other conciseness issues. A stronger sentence is: “The prosecutor *is deciding* whether to charge Greene.”<sup>25</sup>

It takes time to make writing concise, whether you do this as you’re writing or when you’re revising and editing. But the time will be well-spent, and the reader will notice – and appreciate – the difference.

### Endnotes

<sup>1</sup>Blaise Pascal, *Lettres Provinciales*, no. 16 (1656-57). Also attributed in slightly different wording to Mark Twain and others.

<sup>2</sup>Daniel M. Oppenheimer, *Consequences of Erudite Vernacular Utilized Irrespective of Necessity: Problems with Using Long Words Needlessly*, 20 *Appl. Cognitive Psychol.* 139, 139 (2006). In a study of Stanford undergraduates, Oppenheimer found a majority “admitted that they had made their writing more complex in order to appear smarter.” See also Joseph M. Williams, *Style: Lessons in Clarity and Grace* 8 (9th ed. 2007) (“some writers plump up their prose to impress those who think complicated sentences indicate deep thinking”).

<sup>3</sup>Williams, *supra* note 2, at 8 (“[W]hen we want to hide the fact that we don’t know what we’re talking about, we typically throw up a tangle of abstract words in long, complex sentences”); Oppenheimer, *supra* note 2, at 153 (citing J.W. Pennebaker & T.C. Lay, *Language Use and Personality During Crises: Analysis of Mayor Rudolph Giuliani’s Press Conferenc-*

*es*, 36 *J. Research in Personality*, 271-82 (2002) (“people are more likely to use big words when they are feeling the most insecure”).

<sup>4</sup>See Richard C. Wydick, *Plain English for Lawyers* 3 (4th ed. 1998) (“We lawyers ... use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant”).

<sup>5</sup>Oppenheimer, *supra* note 2, at 151-52. When writers use needlessly long words, the reader is less impressed and may even have difficulty understanding the writing as a result of “lowered processing fluency.” Writers should avoid “needless complexity” but should not dispense with all long words. “[T]here are many times when a long word is appropriate, because it is more precise or concise.” Lawyers will need to use legal terms of art when appropriate (sometimes a writer who fails to include the specialized terms may not be perceived as “an in-group member of the field”).

<sup>6</sup>*Chase v. Kalber*, 153 P. 397, 398 (Cal. 1915).

<sup>7</sup>Bryan A. Garner, *Legal Writing in Plain English: A Text with Exercises* 3 (2001).

<sup>8</sup>See Terri LeClercq, *Guide to Legal Writing Style* xv (4th ed. 2007) (casebook cases are chosen for their legal principles, not for their prose).

<sup>9</sup>Some people argue that the writing process should be kept as free-flow as possible, and that work on concision should occur during editing and revision. See, e.g., Ian Gallacher, *A Form and Style Manual for Lawyers* 184 (2005) (“First, you have to draft, and you need to draft without interference from the editing part of your brain”); Richard K. Neumann Jr. & Sheila Simon, *Legal Writing* 149 (2008) (it’s “only through rewriting,” when the writer finds “opportunities to make the earlier draft clearer and more vivid and concise” that the writer achieves effective style).

<sup>10</sup>For more on these and other tips, see Garner, *supra* note 7, at 17-51; Williams, *supra* note 2, at 112-30; and Eugene Volokh & J. Alexander Tanford, *How to Write Good Legal Stuff*, <http://www.law.indiana.edu/webinit/tanford/reference/how2write.html> (2001).

<sup>11</sup>Williams, *supra* note 2, at 113; see Anne Enquist & Laurel Currie Oates, *Just Writing*, 125-27 (2d ed. 2005).

<sup>12</sup>See Enquist & Oates, *supra* note 11, at 132.

<sup>13</sup>*Id.* at 130 (citing David Mellinkoff, *The Language of the Law* 58 (1963)).

<sup>14</sup>Williams, *supra* note 2, at 113.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>Garner, *supra* note 7, at 23.

<sup>18</sup>*Id.*

<sup>19</sup>Enquist & Oates, *supra* note 11, at 121.

<sup>20</sup>County Sheriff’s Motion & Aff. in Contempt, *Rokakis v. Commodore NRM Ltd.*, No. CV 419579 (Cuyahoga, Ohio, County Court of Common Pleas, filed Mar. 6, 2008). This delightful example of antiquated legal jargon made its way around the national legal writing community via listserv in July 2008.

<sup>21</sup>Garner, *supra* note 7, at 25.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>Enquist & Oates, *supra* note 11, at 121.

<sup>25</sup>*Id.* ☐