

# More Effective Writing Makes More Effective Lawyers

Useful Strategies,  
Crucial Details,  
and Plenty of Practical Tips

Rick Horowitz  
Discussion Leader



**YOUR NAME HERE**

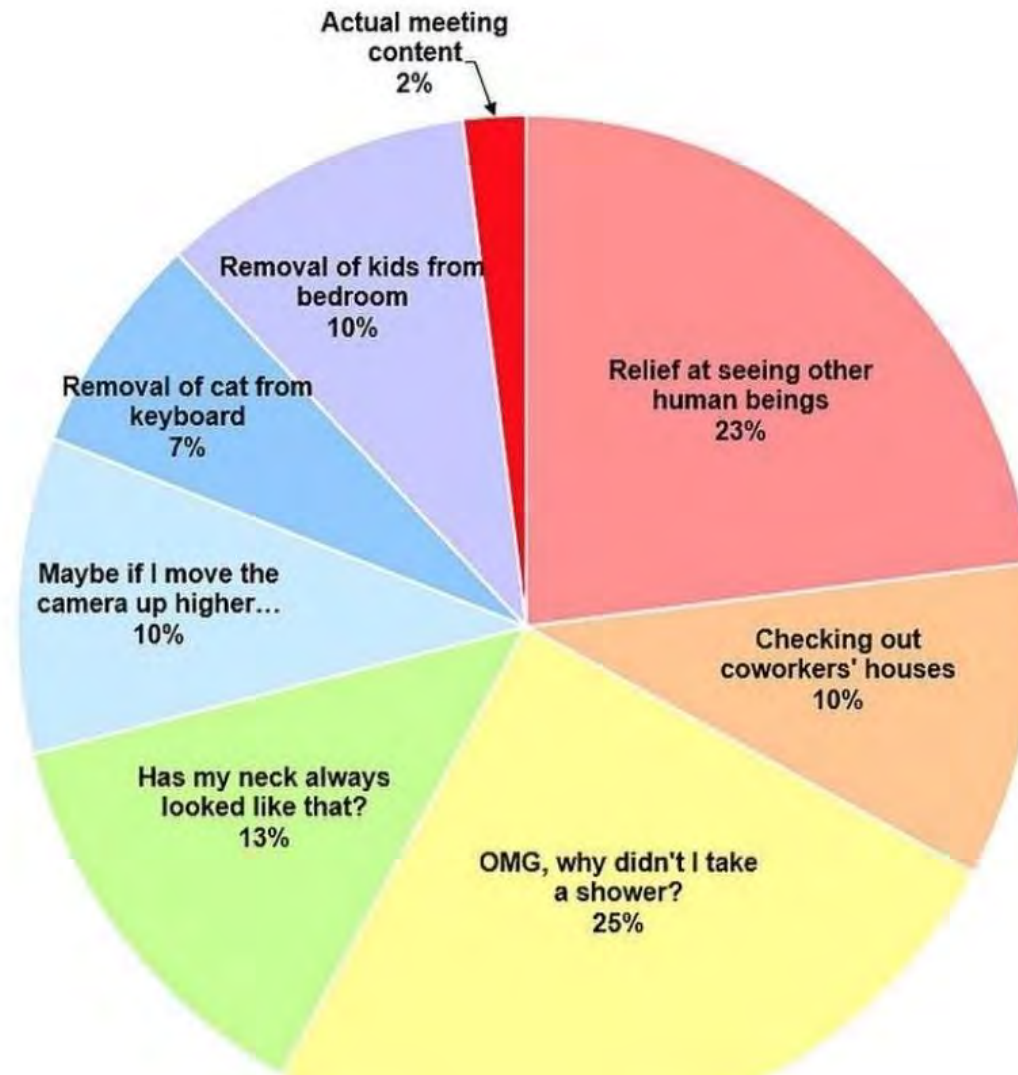
Thanks!  
Rick

Find tent cards  
and markers  
in the back row!

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## Diagram of Zoom Meeting Attention Span



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# Videoconference Bingo!

HI, WHO JUST JOINED?	CAN YOU EMAIL THAT TO EVERYONE?	IS ____ ON THE CALL?	UH, ____ YOU'RE STILL SHARING...	HEY, GUYS, I HAVE TO JUMP TO ANOTHER CALL
(SOUND OF SOMEONE TYPING, POSSIBLY WITH A HAMMER)	(LOUD, PAINFUL ECHO/ FEEDBACK)	(CHILD OR ANIMAL NOISES)	HI, CAN YOU HEAR ME?	NO, IT'S STILL LOADING.
NEXT SLIDE, PLEASE.	CAN EVERYONE GO ON MUTE?	I'M SORRY; I WAS ON MUTE	(FOR OVERTALKERS) SORRY, GO AHEAD	HELLO? HELLO?
SO (cuts out) I CAN (unintelligible) BY (cuts out) OK?	SORRY I'M LATE (INSERT LAME EXCUSE.)	I HAVE A HARD STOP AT...	I'M SORRY, YOU CUT OUT THERE.	CAN WE TAKE THIS OFFLINE?
I'LL HAVE TO GET BACK TO YOU.	CAN EVERYONE SEE MY SCREEN?	SORRY, I WAS HAVING CONNECTION ISSUES.	I THINK THERE'S A LAG.	SORRY, I DIDN'T CATCH THAT. CAN YOU REPEAT?





*"Yes, Peters, it is just legalese. It's all just legalese. We're a law firm."*

# Mismatch Much?

5%

95%

## What Lawyers (Say They) Read...

Even fewer writers would admit to a lack of skill. In fact, though, judges do not give high marks to the briefs they read, briefs that prompt a “strong, recurring, and unmistakable cry for conciseness and clarity.”<sup>39</sup> Lawyers themselves estimate that only 5% of the documents they read are well drafted (although, in a triumph of self-deception, 95% of them would claim to produce high-quality documents).<sup>40</sup> Of course, the only remedy for lack of skill is education and training — in the schools and afterward, throughout a writer’s professional life. Otherwise, we may never see and guard against the flaws

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<sup>39</sup> Benson, *supra* n. 1, at 571.

<sup>39</sup> See Kristin K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 Legal Writing: J. Legal Writing Inst. 257, 268, 276, 279 (2002) (reporting that only 23% of 355 judges surveyed rated the analysis in briefs as very good or excellent, only 11% gave that rating to the writing style, and only 19% said the briefs were usually concise).

<sup>40</sup> Bryan A. Garner, *President’s Letter*, The Scrivener (newsletter of Scribes — American Society of Legal Writers) 1, 3 (Winter 1998) (reporting on Garner’s survey of lawyers at his seminars); see also Carl Felsenfeld, *The Plain English Movement in the United States*, 6 Canadian Business L.J. 408, 413 (1981–1982) (“Lawyers have two common failings. One is that they do not write well and the other is that they think they do.”).

## What Lawyers (Say They) Write

# Today's Likely Agenda (1)

- When Lawyers Write: What Can Go Wrong?
- “So Here’s the Situation...”: The Writing You Do *Before* You Start Writing
- Demystifying the Process: Four Essential Questions, and Two Key Factors
- “What's In? What's Out?” Complete v. Concise
- A Few More Words About Getting Started: Different Strokes for Different Folks

# Tomorrow's Likely Agenda (2)

- “Where Do I Put It?” Help Them Early – and Often
- “How Do I Say It?” Going for Clarity
- “How Do I Say It?” The (Occasional) Value of Vagueness
- “How Do I Say It?” Going for Brevity
- “How Does It Come Across?” Tone & Voice

# More Effective Writing Makes More Effective Lawyers

Useful Strategies,  
Crucial Details,  
and Plenty of Practical Tips

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# “Useful”

- Better Insights
- New Approaches
- Greater Confidence
- Tools and Tips

# “Practical” (Or, “This Will Help Me *How?*”)

- More productive use of time.
- Better writing/editing decisions.
- Clearer, crisper...documents.
- Better understanding – when you *want* to be understood.
- More effective.

## **Bonus Benefit:**

- Less likely to sound like pompous ass.















# **When Lawyers Write: What Can Go Wrong?**

# One Person's List

We lawyers do not write plain English. We 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. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is "(1) wordy, (2) unclear, (3) pompous, and (4) dull" <sup>1</sup>

Source: Wydick, **Plain English for Lawyers**



# Really?

“Any person who, by means of any machine, instrument, or contrivance, or in any manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument of any internal telephonic communications systems, or who willfully and without consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any such wire, line or cable, or is being sent from or received at any place within this state, or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison not exceeding three years, or by both such fine and imprisonment in the county jail or in the state prison.”

California Penal Code §631(a)



**Don't Try This at Home!  
(Or Even in the Office)**

**Rick's Rules of the Road  
for Less-than-Effective Legal Writing**

**Or, “A Few Common Lawyerly Assumptions  
Worth a Second Look”**



**“If I don’t use words like ‘herein,’ clients will think it could have been written by an intern, and they won’t want to pay the rates we’re charging them.”**

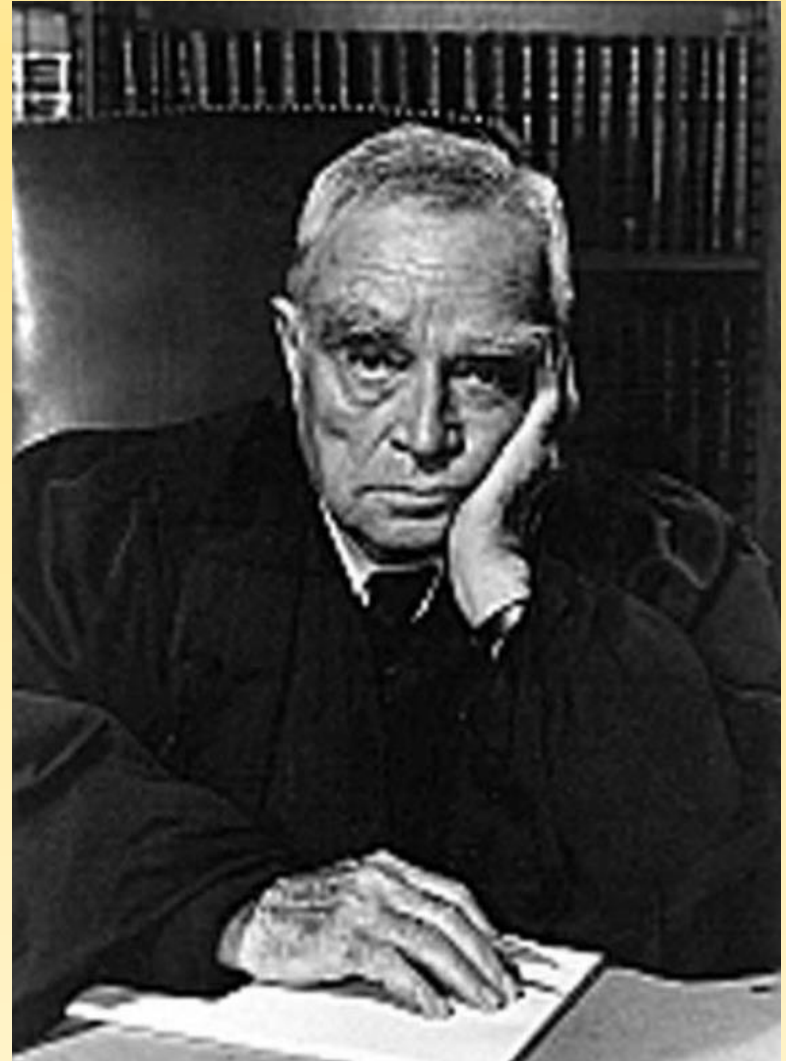
***A. Lawyer***

*Park not,  
lest ye  
be towed*

**Mistakes  
were  
made.**

“The language of the law  
must not be foreign  
to the ears of those  
who are to obey it.”

*Learned Hand*



“I hate writing,  
I love having written.”



*Dorothy Parker*

# The Questions...

**What's the most difficult part of the writing and editing process for you?  
(Note: "All of it" is not an acceptable answer – I need details!)**

**What part do you most enjoy?**

**How – if at all – have your writing and editing changed since you became an attorney?**

**What's the most valuable writing/editing tip you've either received from someone else or discovered for yourself?**



**“So Here’s the Situation...”:  
The Writing You Do  
*Before* You Start Writing**



# Situational Writing!

# Think About It:

## What “Writing Situations” Have *You* Faced?

1.

2.

3.

# **Demystifying the Process: Four Essential Questions, and Two Key Factors**

# The Four Essential Questions

**“What’s in?”**

**“What’s out?”**

**“Where do I put it?”**

**“How do I say it?”**

(Or Is It Five?)

**“What’s in?”**

**“What’s out?”**

**“Where do I put it?”**

**“How do I say it?”**

**“How does it come across?”**



# Identifying Your Goal

**What do you want them to know?**

**To think?**

**To feel?**

**To do?**

# Backward Mapping:

“Begin with the end in mind.”

“Would you tell me, please, which way I ought to go from here?”

“That depends a good deal on where you want to get to,” said the Cat.

“I don’t much care where – ” said Alice.

“Then it doesn’t matter which way you go,” said the Cat.

*Lewis Carroll*

**“If you want to sell what John Smith buys, you have to see the world through John Smith’s eyes.”**

***(Folk Wisdom)***

# Adjusting to Your Audience

*Consider in advance how you will explain legal concepts and terminology. Use plain words that accurately describe the concept without implying that you're talking down to the client. Compare two examples. The first flunks this standard:*

*1. A lawyer, speaking to a client who owns a gas station and who has just been served with a temporary restraining order:*

A TRO can be granted while a motion for a preliminary injunction is pending for the purpose of preserving the status quo until the motion can be decided. You've been restrained from selling gasoline from the pumps alleged by the Department of Environmental Protection to be an environmental hazard, and violation of the order is punishable as a contempt. The order is effective until it's vacated, which probably won't be before the court decides the pending motion for a preliminary injunction, which has a return date of next Friday.

*2. Another lawyer, conveying the same information to the same client:*

A judge can order you not to do something for a short period, which is what has happened here through this document, which lawyers call a temporary restraining order or a TRO. This TRO orders you not to sell gas from the pumps that the Department of Environmental Protection complained to you about last week. If you sell gas from those pumps anyway, the judge can make you pay a fine or even lock you up in jail. The DEP has also asked for another kind of court order called a preliminary injunction, which would do the same thing but for a longer period of time. The judge hasn't given DEP a preliminary injunction, although she might do so later. The TRO—the order that was delivered to you yesterday—will last until the judge decides on Friday whether to issue the other order, the preliminary injunction.

# Understanding Your Readers

- Why does he need the information – and how will he use it?
- What does she already know?
- How much does he *want* to know?
- What language and organization will seem natural to her?

Adapted from Armstrong & Terrell, **Thinking Like a Writer**



# Meanwhile, Those Readers Are Asking Themselves...

- Will she help me?
- Is it worth my time?
- *Is he on the same planet?*

Source: Armstrong & Terrell, **Thinking Like a Writer**

# Which One of These Works?

We can violate our readers' organizational expectations on the small scale as well as the large—as the three examples below show. This usually happens because we fail to think about the perspective from which a passage should be written.

In the two versions of the passage below, taken from a letter to a client, the first adopts a legal perspective, the second the client's. The first may be appropriate for a judge, an administrative agency, or, on occasion, another lawyer. The second is usually best for the client itself.

## *Version 1*

**Both the Unruh Act and the Health & Safety Code contain antideficiency provisions. If either of these statutes applies, it will bar the Bank from obtaining a deficiency judgment, regardless of who purchases at the repossession sale. The Unruh Act applies to . . .**

## *Version 2*

**The Bank will be able to obtain a deficiency judgment against the obligor if the Bank has made a direct loan to the purchaser of the boat or mobile home. However, the Bank will be barred from obtaining a deficiency judgment, regardless of who purchases at the repossession sale, if the Bank has purchased a retail installment contract from a dealer. The relevant antideficiency provisions are contained in the Unruh Act. . . .**

More planning time = Less writing time.

*Workshop Attendee*

Take

Need

^ more planning time = ^ less writing time.

**“What’s In?” “What’s Out?”  
Complete v. Concise**

“Include this.  
Include that, too.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**



# Complete v. Concise: The Eternal Struggle

**The most difficult part of the writing/editing process is . . .**

- “Including the appropriate amount of detail for my analysis.”
- “Being concise, while providing enough details.”
- “Being concise but complete.”
- “Trying to be concise while at the same time including all of the relevant facts/details/argument—especially when up against a word limit.”
- “The most difficult part for me is streamlining my work. It’s hard to give up details or elements of reasoning that add context or depth.”

# Complete v. Concise: The Struggle Continues

- “I often write draft briefs, complaints, etc. to be reviewed by senior attorneys. In drafting, I try to be over-inclusive. In that way, I allow the senior attorneys to simply delete/simplify rather than add. (I will often include comments indicating that certain arguments may not be necessary, etc.) While I think this makes the senior attorney’s job easier, sometimes it seems to backfire, e.g., giving the appearance that I can’t prioritize issues. I find this line hard to draw.”
- “Knowing when to stop researching and start writing. Not getting pulled down research rabbit holes when I’m unhappy with my writing product.”
- “I often buried myself with tons of information and did not know when to start writing; I did not feel confident enough to start writing.”

# “Care for an Argument?”

“Too many advocates treat the process of briefing as if they were a waiter at a cocktail party. They carry around a platter of hors d’oeuvres and ask judges or their readers if they’d like one.”

Source: Stark, **Writing to Win: The Legal Writer**

**“Nothing is less real than realism. Details are confusing. It is only by selection, by elimination, by emphasis that we get at the real meaning of things.”**

**Georgia O’Keeffe**

# “Regurgitating versus sifting.”

Source: Armstrong & Terrell, **Thinking Like a Writer:  
A Lawyer’s Guide to Effective Writing and Editing**

# Situational *Selecting*

- Who's receiving your document?
- What do they need to know *now*?
- How much time do they have?
- How much expertise do they have?
- How familiar with the case are they?



**A Few More  
Words About  
Getting Started...**



**(Different  
Strokes for  
Different  
Folks)**



# Making It Better: The First Draft, and Beyond

## *Technique 1.1: Anticipate likely problems.*

Your effectiveness as an editor depends on your skill as a diagnostician. Like a doctor about to give a physical, you should approach a draft with an educated sense of the problems most common to drafts of legal writing—and, if you are editing your own writing, of the specific problems to which you are particularly prone. With this perspective, you should be able to predict many of the problems you will encounter, and therefore to spot them more quickly.

Among professional writers, most problems can be traced back to the inherent difficulties of writing about complex issues. In the first draft and perhaps the second, our job is to do justice to the content. Most of our energy is expended simply trying to get the material down in a roughly logical sequence; we do not have much left for working on clarity and persuasiveness. In later drafts, we should do justice to the reader, a job that requires the stylistic and organizational tactics described in the book's earlier chapters. Almost inevitably, for example, a draft will need major surgery to its introduction, to the introductions to its sections, and to the "mini-introductions" before new chunks of information within sections. Its structure will probably be too difficult to grasp. If it relies on much case law, you will probably have to tie each case more clearly to your analysis before discussing it. Transitions will be inadequate. And you will have written many clumsily constructed sentences because you were using them simply as rough-and-ready containers for their content.

Source: Armstrong & Terrell,  
**Thinking Like a Writer**

# “Start writing immediately!”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

“Make sure you have the perfect opening sentence before you write another word.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

“Vomiting onto the screen.”

*More People than You Might Expect*

# FUD

First unacceptable draft





# Maybe the Best Writing Tip Ever!

“First draft is crap. And that’s OK.”

*Faith Burns, CLE Attendee*

## **S h i t t y   F i r s t   D r a f t s**

...All good writers write them. This is how they end up with good second drafts and terrific third drafts. People tend to look at successful writers, writers who are getting their books published and maybe even doing well financially, and think that they sit down at their desks every morning feeling like a million dollars, feeling great about who they are and how much talent they have and what a great story they have to tell; that they take in a few deep breaths, push back their sleeves, roll their necks a few times to get all the cricks out, and dive in, typing fully formed passages as fast as a court reporter. But this is just the fantasy of the uninitiated. I know some very great writers, writers you love who write beautifully and have made a great deal of money, and not *one* of them sits down routinely feeling wildly enthusiastic and confident.

Source: Anne Lamott,  
**Bird by Bird**

# Tear It Up and Start Again

Don't be afraid to start over and learn from the first take, especially when doing something important.



**By Harry Guinness**

April 9, 2020

I'm a big fan of awful first drafts. All of my writing (even this article) starts with an incriminatingly bad first draft, riddled with typos and clichés, grammatical errors and half-finished sentences. No one else sees those drafts. I tear up that awful first draft and start again — and that's when things start to click. That's when sentences start to flow coherently, when ideas and themes make sense, and when the real work gets done.

Source:  
The New York Times

## On Second Thought...

“The editing process is your friend; sometimes it is great to get everything out and then read it through a second time and cut/re-word as necessary. I used to think this was the mark of someone who wasn’t a great writer; that you should be able to do it correctly the first time. This was so wrong.”

*Tip from an Attendee Just Last Week!*





Kirkus Writers' Center

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"You can always edit a bad page. You can't edit a blank page."  
—Jodi Picoult



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# The Outline...

(or at least  
“An  
Outline...”)

- I. Introduction
  - A. Overview of the issue you are examining
  - B. Overview of what your paper will cover, and how this will be accomplished
  - C. Thesis statement
- II. The Issue
  - A. History behind the issue
  - B. Challenge posed by the issue
  - C. How the issue impacts society in general
  - D. Possible solutions to resolve the issue that occurred to you before conducting your research
- III. Literature Review
  - A. Theoretical/Exploratory literature (journal articles, textbooks)
    - 1. Overview/summary of each theory and/or explanation
    - 2. Relevance of each theory/explanation to the issue
    - 3. Application and utility of theoretical/exploratory findings to the issue
  - B. Empirical literature (journal articles) – For each study:
    - 1. Overview of the empirical study
    - 2. Summary of methodology
    - 3. Summary of the relevant/key findings related to the issue
    - 4. Critique of the study
      - a. Was it well thought out and designed?
      - b. Were seemingly appropriate methods utilized?
      - c. Were the findings applicable to your thesis?
        - 1) If so, how?
        - 2) If not, why?
  - C. Summary
    - 1. Cohesive summary of all relevant findings, theoretical, exploratory, and empirical

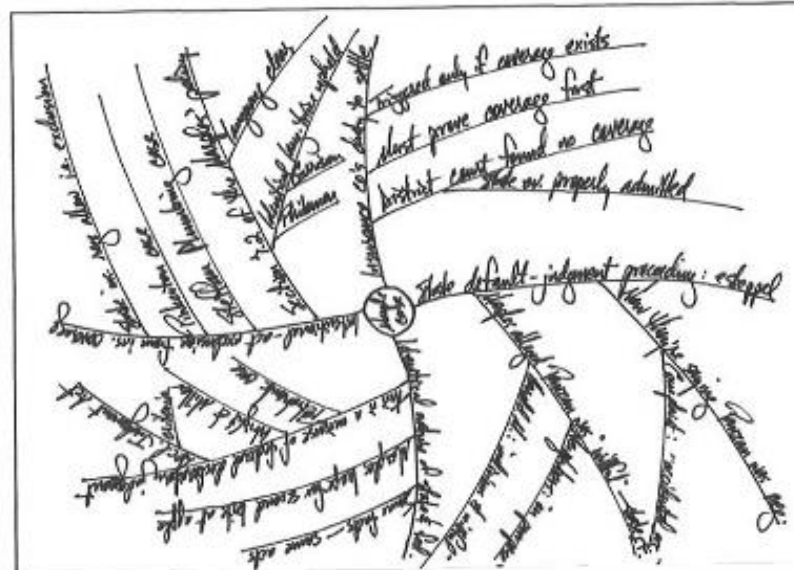
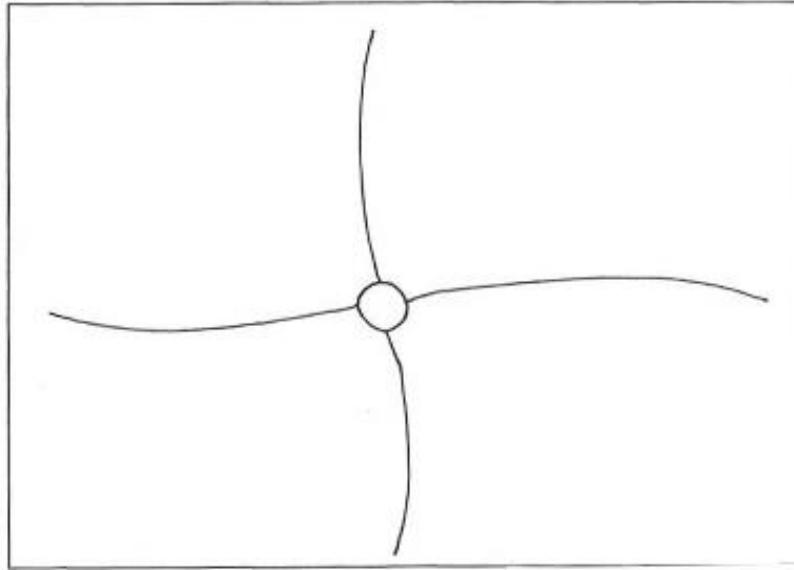
# Unpleasant, She Says – but Effective

“Outline! It sounds silly and I (still to this day) dislike outlining and much prefer to throw myself into the material, but I do see a higher-quality product when I spend the time to outline.”

*Tip from a Recent Attendee*



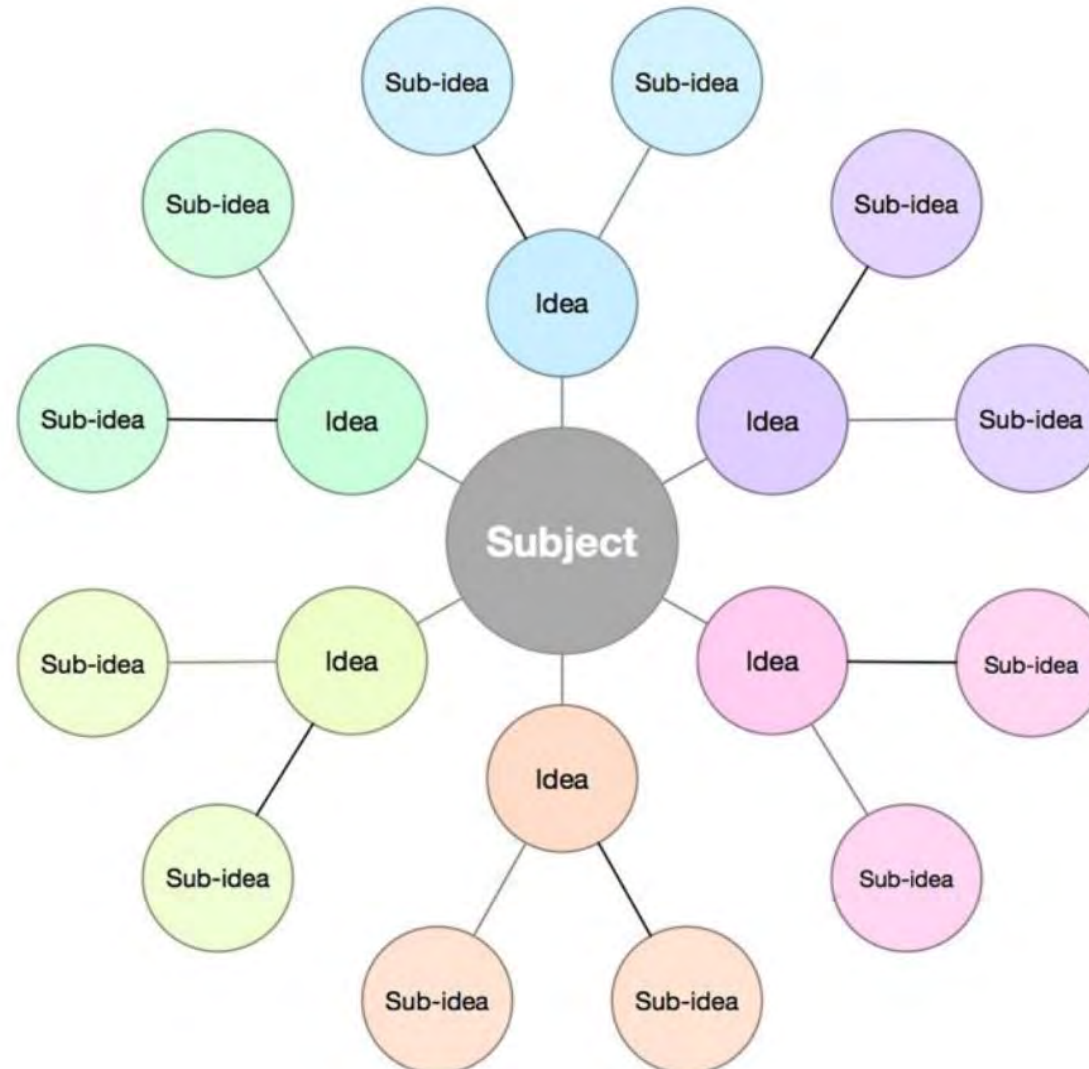
# The Whirlybird



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Source: Garner, **Legal Writing in Plain English**

# Mind Mapping

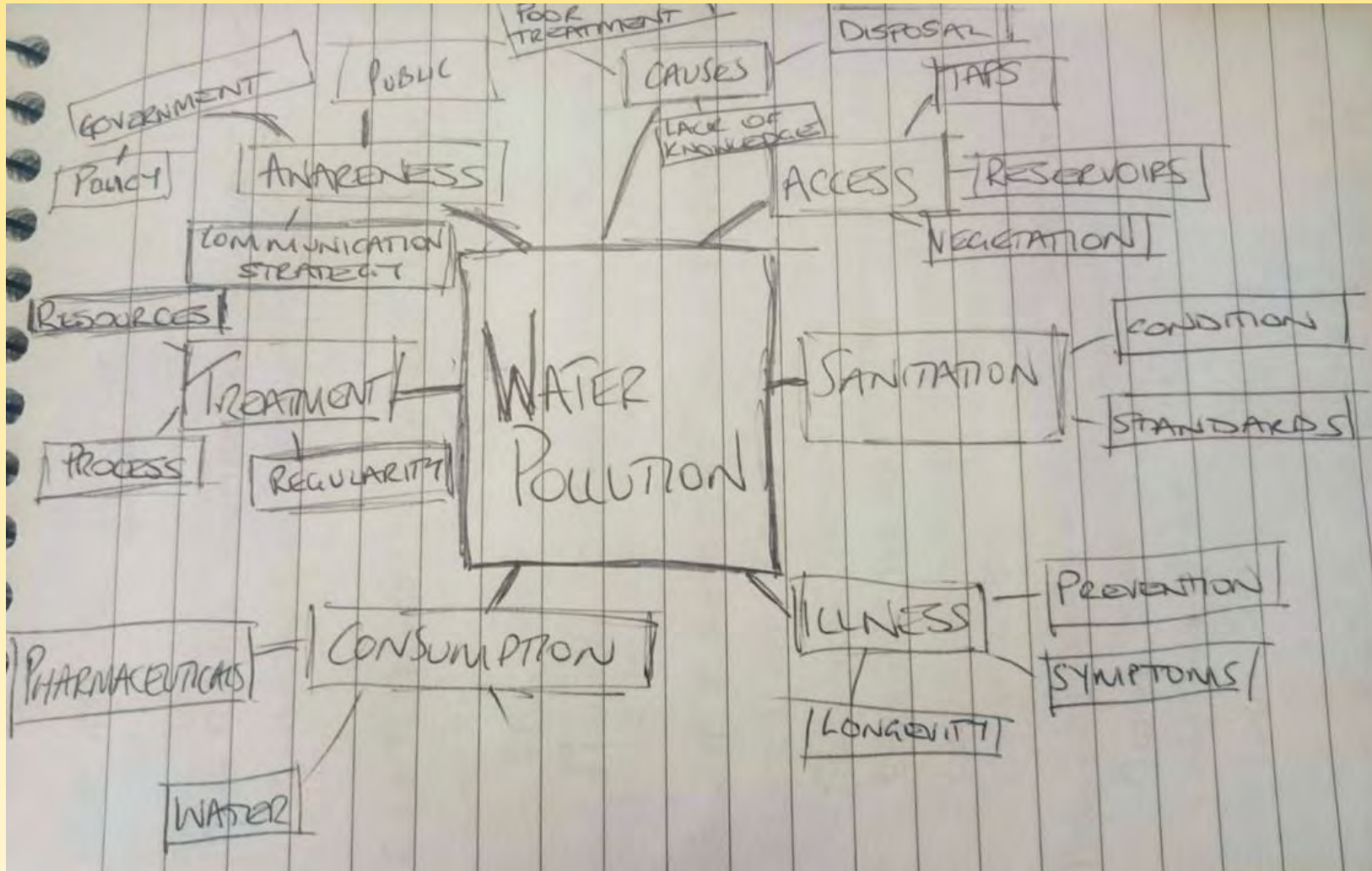


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Source: [TheSweetSetup.com](http://TheSweetSetup.com)

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# Mind Mapping



*“Always write the first part first,  
and the last part last.”*

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# Getting Started: Take Some of the Pressure Off

Joe doesn't want us to pay too much attention to the content yet.

This is how he does it.

# Getting You Over the Hump: A First-Draft Font?





# And the Twittersphere Responds...



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**It's time for lunch.  
“Drilling Down on the Details”  
starts at 1:30.**



**“Where Do I Put It?”  
Help Them Early – and Often**



# First Things First.

## *Before:*

Dear Jane:

As you requested, we have prepared your deed. It is now ready for signature. After it is signed, stamped and sealed, it should be returned to our office.

Your signature must be given in the presence of a notary public and a witness. Neither the witness nor the notary can be your kin and both must be over 18 years of age.

Please sign the enclosed deed exactly as your name is printed.

## *After:*

Dear Jane:

As you requested, I have prepared your deed in the form we discussed last month. It is now ready for your signature.

Please sign the deed exactly as your name is printed. You must sign it in the presence of a notary public and a witness. Both must be over 18 and unrelated to you.

After the deed is signed and the notary has stamped and sealed it, please return it to our office by hand or by certified mail, return receipt requested.

# Are You Ready to Order?

“What information, sequenced and presented how, will be most helpful to you in accomplishing your goal?”

“What information, sequenced and presented how, will be most helpful to the person reading what you’re writing?”

# Organize This!

- Plum
- Orange
- Carrot
- Grapefruit
- Lime
- Broccoli
- Tomato
- Celery
- Peach
- Lettuce
- Potato
- Grape
- String Bean
- Pea
- Squash
- Lemon
- Cantaloupe
- Apple
- Bacon
- Spinach
- Turnip
- Pear
- Mango
- Onion

# ATFQ

# ATFQ

## Answer The Freaking Question

Or Maybe This One is More Familiar...

**BLUF**

**Bottom Line Up Front**





# The Whistle-Blower Knows How to Write

His complaint offers lessons on how to make a point.

By Jane Rosenzweig

Ms. Rosenzweig is the director of the Writing Center at Harvard.

Sept. 27, 2019

I can't tell you what's going to happen to his blockbuster complaint about the president's behavior, but I can tell you that the whistle-blower's college writing instructor would be very proud of him.

As a writing instructor myself for 20 years, I look at the complaint and see a model of clear writing that offers important lessons for aspiring writers. Here are a few:

## The whistle-blower gets right to the point.

We know right away what his purpose is and why we should care. He wastes no time on background or pleasantries before stating that he is writing to report "an 'urgent' concern." And then he immediately states it:

"In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election."

## The whistle-blower uses subheadings to make sure we can connect the dots.

Most subheadings don't do much to enhance a document. The whistle-blower's subheadings do what the best subheadings do: They structure the complaint and provide a clear outline of what the document contains:

I. The 25 July Presidential phone call

II. Efforts to restrict access to records related to the call

III. Ongoing concerns

IV. Circumstances leading up to the 25 July Presidential phone call

The bonus of good subheadings is that they serve as a guide for writing the rest of the document. Even if you're writing something less formal, you can use subheadings to organize your document and then remove them before you share it.

**The whistle-blower gets an A for his topic sentences.**

Strong persuasive or expository writing features topic sentences that tell the reader what to focus on. You can see the benefit of a good topic sentence in this paragraph from the complaint:

“Multiple White House officials with direct knowledge of the call informed me that, after an initial exchange of pleasantries, the president used the remainder of the call to advance his personal interests.....”

The perfect gift for everyone on your list.  
Gift subscriptions to The Times. Starting at \$25.

With that first sentence, we know that this is going to be a paragraph about how the president used the phone call. And indeed, the sentences that follow flesh out that picture.

**The whistle-blower uses active verbs.**

Among other revelations in the complaint, we learn that “the president also praised Ukraine’s prosecutor general, Mr. Yuriy Lutsenko” and that “senior White House officials had intervened to ‘lock down’ all records of the phone call.”

Contrast that with versions of those sentences that he could have written, which might read like this: “Ukraine’s Prosecutor General was praised” or “all records of the phone call were locked down.”

Passive constructions leave us hanging about who did what, which can be useful if you’re trying to deflect responsibility for something. But if you want to keep your reader focused on who is accountable for what, tell them by making sure your sentences feature real people performing actions.

Every semester, I encounter students who tell me variously that they hate writing, that they’d rather not write, that for the careers they aspire to they won’t need to write. I explain that no matter what careers they choose, they will have to write — reports, strategic plans, proposals and, if nothing else, many, many emails.

But I also tell them that learning to write matters because some day they may have something to say that really matters to them and possibly to the world — and they will want to convey it when the moment arrives in writing that’s clear and concise.

May they never have to blow the whistle. But in case they do, by studying the whistle-blower’s complaint, they’ll be a bit more prepared to write their own.

Jane Rosenzweig is the director of the Harvard College Writing Center.

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11/18/19, 10:58 AM

# Which Facts Will Matter?

Motion to Suppress and  
Exclude Evidence:  
Unlawful Search and  
Seizure

At approximately 4:00 p.m. on December 7, 2000, West Carolina State Troopers Charles Jones, Ronald Brown, and David Green, accompanied by Assistant State's Attorney Frank Smith, went to John Torrance's home located at 1819 Fawn Way, Centerville, West Carolina. A search of the premises was conducted resulting in the seizure of a brown calendar book and a red notebook from Torrance's bedroom. Torrance attempts to suppress these items.

Torrance had developed as a prime suspect in a homicide that occurred during the afternoon of December 7. That fact led the troopers to his residence. At trial, Troopers Jones and Brown and Torrance's father testified about what happened in the Torrance residence.

Jones stated that Brown was in charge and that, upon arriving at the front door, they were greeted by Torrance's mother. Brown asked permission to search the house for Torrance. She allowed them to enter the house, but asked that they wait for the arrival of her husband. Brown's version of the initial contact is similar. There is no question that the purpose of the troopers was to determine if Torrance was in the house. Brown also told her that Torrance was a suspect in the homicide case and that the police wanted to search the home for Torrance. The troopers and Mrs. Torrance waited in the kitchen for the arrival of Mr. Torrance, a wait of some fifteen to twenty minutes. During the wait two events took place. First, Brown testified that while they waited they observed and listened for the signs of any movement in the house. Second, as a result of a conversation between Brown and Mrs. Torrance about a gun missing from the ...

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Source:  
Armstrong & Terrell,  
**Thinking Like a Writer**



## Which Facts Will Matter? (This Might Help.)

Assume, for example, that the passage about the search had been preceded by this introductory paragraph:

John Torrance attempts to suppress evidence seized from a drawer in his bedroom by the state troopers who searched his parents' home, where he lived. He argues that the troopers did not receive his parents' informed consent for the warrantless search. Although the troopers conducted the search only after Torrance's father had signed a form permitting them to search his home and seize any material relevant to their investigation, they did not clearly explain the form to the father, and stated explicitly that they were searching only for Torrance himself. The evidence they seized is therefore inadmissible.

This introduction does several good things that most introductions should do, and to which this and later chapters will return. For the moment, one thing matters most. It gives us a focus—in fact, three intertwined foci. In legal terms, there was no informed consent; in factual terms, the father did not clearly understand the purpose of the search; in decisional terms, the seized evidence is inadmissible. The foci could have been differently shaped, as questions (was there informed consent?) or simply as topics (the issue is informed consent). But the results would have been much the same:

## And Here's Why.

- We can now throw our minds into gear and think as we read, not just try to memorize.
- We can distinguish between important details, secondary ones, and those we can afford to ignore.
- Because we can grasp the significance of each detail as we see it, we can read more efficiently and with far less distraction and frustration.

Note the power of this change. The passage has more wrong with it than the lack of an introductory focus. It contains too many irrelevant facts, and the facts are badly organized. Ideally, if the writer had begun with a focus, he then would have recognized these other problems and fixed them. But even if that did not happen, if the rest of the passage remained badly written, the focus has transformed our ability to cope. It has the same result as putting a flashlight in the hands of someone about to walk down a dark, winding, treacherous path. The terrain remains the same, but his chances of navigating it successfully improve tenfold.<sup>1</sup>



## Let's Look at This One...

### *Before:*

On August 4, 2001, Jessica Hall was involved in a motor vehicle accident at the intersection of routes 6 and 25 and the spur from exit 9 of 1-84 in Newtown. Jessica was a passenger in a pickup truck driven by her mother, Wendy Hall. Wendy Hall left exit 9 of 1-84 and proceeded eastbound on the exit spur to routes 6 and 25. At this point, routes 6 and 25 overlap into one road. When she approached the intersection of the spur and routes 6 and 25, she attempted to turn left to go north on routes 6 and 25. She testified that, because her vision was obstructed by brush, she could not see traffic traveling south on routes 6 and 25 so she inched her way onto the highway to obtain a view. At that point, a tractor trailer driven by John Jones was driving southbound on routes 6 and 25. Wendy Hall did not see the tractor trailer until it was suddenly upon her vehicle. Jones attempted to avoid a collision by braking and swerving to the left but was unable to do so and struck Wendy Hall's truck, severely injuring Jessica Hall.

Source: Armstrong & Terrell,  
**Thinking Like a Writer**

## ...and Try a Different Approach

The revision escapes this trap, without abandoning chronology entirely:

### *After:*

[FIRST, THE CONTEXTUAL FACTS] On August 4, 2001, Jessica Hall was severely injured when a tractor trailer driven by John Jones collided with a pickup truck driven by her mother, in which she was a passenger.

[NEXT, THE GEOGRAPHY] The accident took place at an intersection where, for some drivers pulling onto the main road, vision is obscured until they are already in the road. At this intersection of exit 9 of I-84 with routes 6 and 25, routes 6 and 25 merge into one road as they are joined by the exit spur. According to the testimony of Wendy Hall, Jessica's mother, the view from the exit spur is obstructed by brush, so that drivers leaving the exit cannot see traffic traveling south on routes 6 and 25.

[FINALLY, THE NARRATIVE] Wendy Hall left I-84 and proceeded east on the exit spur to routes 6 and 25. When she approached the intersection, she attempted to turn left to go north on routes 6 and 25. She testified that because she could not see traffic traveling south, she inched her way onto the highway to obtain a view. She did not see Jones' tractor trailer until it was suddenly upon her vehicle. Jones attempted to avoid a collision by braking and swerving to the left, but was unable to do so and struck her truck.

Source:  
Armstrong & Terrell,  
**Thinking Like a Writer**

# If Your Memo Could be Titled “A History of My Research and Thinking...”?



Bad idea.



# Early Help, Even in Contracts?

Although negotiated documents like contracts are not directly expository in nature—they are instead meant to be very precise, and will be construed many times very carefully before and after a transaction—there is no reason they must be excruciating to read and understand. In this section of a long and complex asset purchase agreement, we have done no more than bring the section’s logic to the “surface” of the document. As chapter 4 argues, this change alone will make the section more coherent from a reader’s perspective, without compromising its rigor.

## *Original:*

2.06(a) **Inventories.** At the nearest practicable time prior to the Closing, the Company shall arrange for the Buyer’s independent auditors, \_\_\_\_\_, to inspect and appraise all inventories of products and materials owned, or estimated to be owned, by the Company on the Closing Date (the “Inventories”). The basis of valuation for such appraisal shall be as follows: (i) raw materials shall be valued at their replacement cost as of the Closing Date; (ii) work-in-process shall be valued at the selling price as of the Closing Date, less the sum of (A) cost to complete, (B) cost of disposal, and (C) a reasonable profit allowance for the completing and selling effort; (iii) finished goods shall be valued at the estimated selling price as of the Closing Date, less (A) cost of disposal and (B) a reasonable profit allowance for the selling effort. The aggregate appraised

Now for Further Distribution

(B) a reasonable profit allowance for the selling effort. The aggregate appraised value thus determined shall be submitted for approval to the Buyer, and shall be the tentative purchase price of the Inventories. The Buyer's approval of such tentative purchase price of Inventories shall be a condition precedent to the obligation of the Buyer to close. At the Closing, Buyer shall pay to the Company an amount equal to eighty percent (80%) of such tentative purchase price. Within forty-five (45) days subsequent to the Closing, the Buyer's independent auditors shall establish a final purchase price for the Inventories in the same manner and with the same standards of valuation as was used for fixing the tentative purchase price of the Inventories. The final purchase price of the Inventories thus established shall be binding on the Buyer and the Company. From such final purchase price, the tentative purchase price of the Inventories paid to the Company at the Closing shall be deducted, and the balance then paid to the Company (or the credit refunded to the Buyer) within ten (10) business days after determination of such final purchase price. In connection with the transfer of the Inventories, the Company shall cease, at the close of the day prior to the Closing, all packaging and shipping, and cease, as at the close of said day, preparing, mixing or otherwise dealing with the Company's raw materials transferred hereby until the Buyer shall have inspected the inventory of raw materials.



# Even in Contracts!

## *Revision:*

2.06(a) **Inventories.** The Company's inventories shall be inspected and appraised as provided in subsection (i) below, using the method of valuation described in subsection (ii). The buyer shall approve this value as outlined in subsection (iii) and, if it gives that approval, shall make payment for the inventories under the terms contained in subsection (iv).

- (i) *Inspection and Appraisal.* At the nearest practicable time prior to the Closing, the Company shall arrange for the Buyer's independent auditors, \_\_\_\_\_, to inspect and appraise all the Company's inventories of products and materials owned, or estimated to be owned, by the Company on the Closing Date (the "Inventories").
- (ii) *Method of Valuation.* The Buyer's independent auditors will value raw materials, work-in-process, and finished goods as follows:
  - a. *Raw Materials.* The replacement cost as of the Closing Date;
  - b. *Work-In-Process.* The selling price as of the Closing Date, less the sum of the
    - i. cost to complete,
    - ii. cost of disposal, and
    - iii. a reasonable profit allowance for the completing and selling effort;
  - c. *Finished Goods.* The estimated selling price as of the Closing Date, less the sum of the
    - i. cost of disposal, and
    - ii. a reasonable profit allowance for the selling effort.
- (iii) *Buyer's Approval of Valuation.* Upon the Buyer's approval of the aggregate appraised value, it will then be the Tentative Purchase Price of the Inventories. That approval shall be a condition precedent to the Buyer's obligation to close.
- (iv) *Disposition of and Terms of Payment for Inventory.* The Buyer shall take possession of and pay for the ~~Not for Further Distribution~~ inventory using the procedure outlined in the following four steps:



- (iv) *Disposition of and Terms of Payment for Inventory.* The Buyer shall take possession of and pay for the Inventories using the procedure outlined in the following four steps:
- a. At the close of business on the day prior to the Closing, the Company shall cease all packaging and shipping of finished goods and shall also cease at that time all preparing, mixing, and other handling of raw materials transferred under this agreement until the Buyer has inspected that raw material inventory.
  - b. At the Closing, Buyer shall pay to the Company an amount equal to eighty percent of the Tentative Purchase Price.
  - c. Within 45 days after the Closing, the Buyer's independent auditors shall establish a final purchase price for the Inventories in the same manner and with the same methods of valuation outlined in sections 1.05(a)(i) and (ii) above. The final purchase price of the Inventories thus established shall bind both the Buyer and the Company.
  - d. Within 10 business days after the Buyer's independent auditors have determined the final purchase price, the Buyer shall pay to the Company the balance owed for the inventories, with deduction (or refund) for that portion of the Tentative Purchase Price already paid to the Company at the Closing.

Source: Armstrong & Terrell, **Thinking Like a Writer**

“If *you* understand the flow  
of your argument,  
so will they.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# The Distinction between Logic and Coherence

“Even if your materials are organized logically, you still have to make that logic clear to your readers at every step, not just in retrospect.”

Source: Armstrong & Terrell, *Thinking Like a Writer*



**Sympathyville 2**



**Dubious Claim  
Ahead**



A yellow rectangular sign with rounded corners and a black border. At the top, the word "CAUTION" is written in large, bold, black capital letters inside a black rectangular box. Below this, the text "STEEP LEARNING CURVE" and "NEXT 5 PGS." is written in bold, black capital letters.

**CAUTION**

**STEEP LEARNING CURVE  
NEXT 5 PGS.**

“For maximum impact,  
be sure to organize your facts  
chronologically. (And start at  
the very, very beginning.)”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# What Goes Next? (Maybe Not What You Think.)

**After the initial paragraph, lead with your strongest facts; don't feel compelled to tell your story chronologically**

Like judges, almost all litigators relate their facts chronologically, beginning with the event that happened first in a historical sequence and proceeding forward to the present.

This is probably the worst mistake most litigators make in their writing. Modern novels, short stories, and movies rarely begin with what happened first. Instead, they start with an important event that leaves a strong impression. Then the narrative proceeds, with the author filling in the earlier facts as background as the plot moves along.

The only two groups left who tell stories chronologically—at least in American culture—are lawyers and six-year-olds.

# More Than Chronology: A Story

Watch a good trial lawyer in a courtroom, and you see a master storyteller at work. Trial lawyers understand that their most powerful weapon is not the “evidence,” in and of itself. It is their ability to organize testimony and exhibits into a credible, compelling story. If they lack that skill, the evidence remains just a mass of data, sometimes persuasive, occasionally memorable, but never a compelling reason for the arbiter to come down on one side of the case rather than the other. If they master the skill, on the other hand, they can make the evidence cohere in a way that gives it larger meaning. Now, it leads us to infer motive, to judge the parties’ behavior, to understand the consequences of their acts, and to empathize with or distance ourselves from them.

But take lawyers out of the courtroom and put them in front of a word processor or dictaphone and, all too often, something goes terribly wrong. The storyteller disappears, and confusion and boredom ensue. The fact section of the brief or memorandum of law becomes an agglomeration of data that is not just unpersuasive, but downright painful to read. True, it is seldom pure chaos, because the writer usually seizes onto chronology as a drowning person onto a life preserver. But a chronology is not a story. Nor can you turn it into one by “spinning” or characterizing the facts, or by adding a few more heart-wrenching details. To write a persuasive story, you have to think carefully about the framework of plot and character around which the facts will cohere.

Source: Armstrong & Terrell: Thinking Like a Writer:  
A Lawyer's Guide to Effective Writing and Editing



# Which Facts? Presented How?

## **[The prosecution version:**

On September 25, 1998, G.L., a minor, was arrested by the Smithville police and charged with trespass and destruction of property under Sections 250.17 and 137.55, respectively, of the West Carolina Criminal Code.

At approximately 9:00 p.m. on September 25, John and Julia Barr and their son, Roger, returned home from a PTA meeting. When they reached their front door, they found that it was ajar. Mr. Barr entered the house and noticed muddy footprints leading across the living room carpet towards the kitchen. In the kitchen, he found food strewn across the kitchen table, and a broken plate on the floor. He then looked through the other rooms on that floor and proceeded upstairs. In his son's bedroom, he found broken furniture and saw that clothes had been pulled from an open drawer and dropped on the floor. In the master bedroom, he found G.L. asleep on the bed. As he entered, she awoke, knocked him over as she pushed by him, and ran out of the house. She was later found and arrested by the police on the nearby golf course.

# Which Facts? Presented How? (2)

## **The defense version:**

On September 24, 1998, G.L., a 15-year-old girl living in the Smithville Home for Orphans, had an argument with her dormitory supervisor and ran away from the Home. She had no money or food with her, and only the clothes she was wearing. She spent the night of September 24 and most of September 25 hiding on the Smithville Country Club golf course.

On the evening of September 25, it began to rain. Her clothing became drenched. At that point, she had not eaten since her lunch the day before. She left the golf course and began to wander through the adjoining neighborhood. In the fourth block, she walked up the drive to the largest house she had so far passed. She rang the doorbell, but no one responded. She then tried the door handle, and found the door unlocked.

Entering the house, she went directly to the kitchen, took some food from the refrigerator, and ate some of it. In the process, she dropped and broke a plate on which there had been a piece of chocolate cake. She then went upstairs, found some dry clothes in a bedroom, and put them on. She sat on the chair to rest, but one leg snapped beneath her. She then went into another bedroom and fell asleep on the bed.

# Which Facts? Presented How? (2 cont'd.)

When the Barrs returned, she awoke and ran out of the room. Mr. Barr tried to grab her as she went past, and was knocked over as she pulled away from him. He was not injured. She then ran out of the house and back to the country club grounds.

After being apprehended by the Smithville police, she was incarcerated in the Smithville City Jail and charged with trespass and destruction of property under Sections 250.17 and 137.55, respectively, of the West Carolina Criminal Code.

Source: Armstrong & Terrell, **Thinking Like a Writer:  
A Lawyer's Guide to Effective Writing and Editing**



# Building Your Story: Seven Techniques for Drafting Facts

- *Panoramic Shot*: Set the stage and sound your theme.
- *Show, Not Tell*: Let choice details speak for themselves.
- *Once Upon a Time*: Replace dates with phrases that convey a sense of time.
- *Headliners*: Use headings to break up your fact section and to add persuasive effect.
- *Back to Life*: Center technical matter on people or entities.
- *Poker Face*: Concede bad facts, but put them in context.
- *End with a Bang*: Leave the court with a final image or thought.

# **“How Do I Say It?” Going for Clarity**

“Whenever possible,  
wow them with legal jargon  
and technical language.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# Clarity: One Definition

Writing so that intended readers can...

1. Easily and quickly find what they need.
2. Understand what they find.
3. Act appropriately on that understanding.

Source: Center for Plain Language

# You Try It: Your Favorite Linguistic Outrages Here...

1.

2.

3.

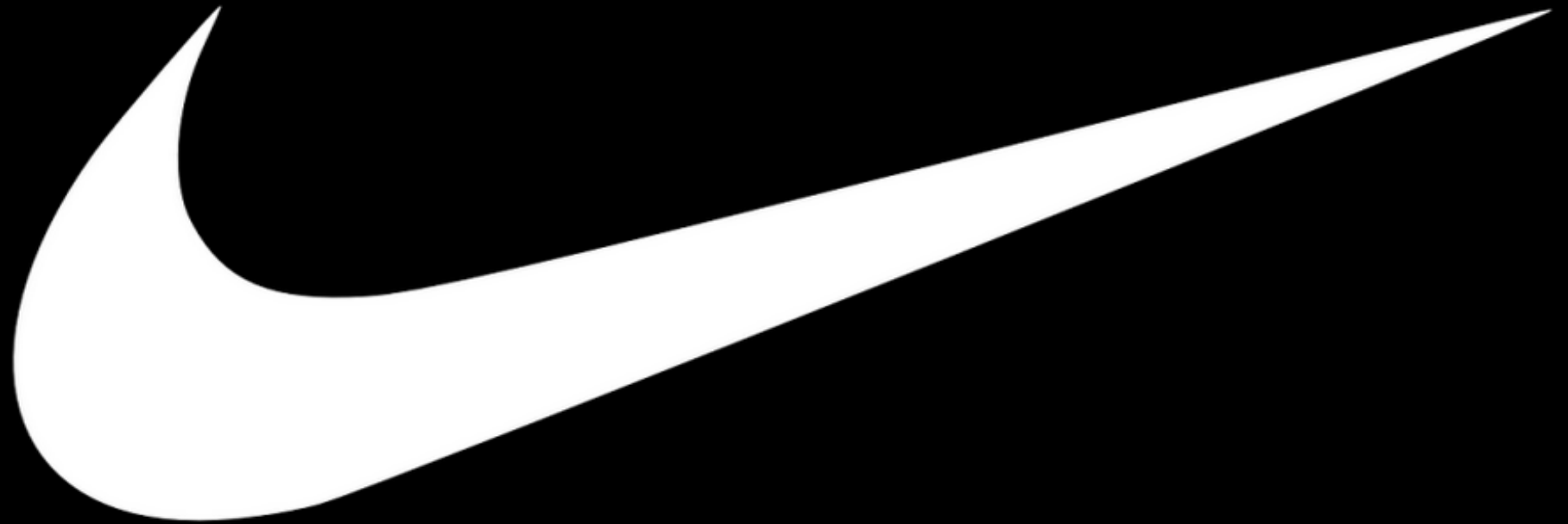
4.

# Dost Thou Speakest Thus?

- "Witnesseth..."
- "Now, Therefore..."
- "In Witness Whereof..."
- "Know all men by these presents..."
- "In consideration of the covenants and conditions stated herein..."



**“If Nike Had  
More  
Lawyers...”**



**SIMPLY OVERCOME NONPRODUCTIVE HESITANCY,  
AND PROCEED WITH ACTIONS  
PREVIOUSLY CONTEMPLATED.**

# You Try It: Dump the Jargon!

How Lawyers Often Say It	How Most Other English-Speaking Humans Say It
“ . . . is able to . . . ”	
“ . . . a sufficient number of . . . ”	
“ . . . at this point in time . . . ”	
“ . . . for the reason that . . . ”	
“ . . . subsequent to . . . ”	
“ . . . for the purpose of . . . ”	

# Dump the Jargon! (cont'd.)

“ . . . notwithstanding the fact that . . . ”	
“ . . . during the course of . . . ”	
“ . . . in light of the foregoing considerations . . . ”	
“ . . . prior to . . . ”	
“ . . . until such time as . . . ”	
“ . . . in the event that . . . ”	

# Call it “Garner’s Paradox”...

“One of the great paradoxes of writing is that writers fear simplicity – even sophisticated simplicity – because they fear being thought simple-minded; yet no better means exists to impress your reader with real intelligence than achieving simplicity.”

Source: Garner, **The Winning Brief**

Prefer  
Peppier  
Prepositions 3

<i>Simplify these:</i>	<i>to these:</i>
<del>situated</del> in	in
<del>starting</del> out with	starting with
<del>start</del> up	start
<del>subsequent</del> to	after
<del>supposing</del> that	if
<del>the fact</del> that	that
<del>the</del> question of whether, whether or not, as to whether	whether
<del>with</del> a view to	to
<del>with</del> respect to, with regard to, with reference to	about, concerning
<del>with</del> the exception of	except for

“We talked briefly about this in your class last week. The attorney in question would not sign settlements without ‘witnesseth.’ Even if I was prepared to accept the terms, I always used to send them back with that word struck. He always returned them with the change rejected.”

*CLE Attendee*

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), is made by and between [REDACTED] ("Employee"), represented by the [REDACTED] (the "[REDACTED]"), and the [REDACTED] (the "[REDACTED]") hereinafter referred together as the "Parties."

WITNESSETH:

WHEREAS, Employee is employed by the [REDACTED]

WHEREAS, the [REDACTED] issued a [REDACTED]

WHEREAS, [REDACTED]

WHEREAS, [REDACTED]

NOW THEREFORE, [REDACTED]

PART I  
MUTUAL CONSIDERATION

1. [REDACTED] disputed [REDACTED]

2. [REDACTED]

3. [REDACTED]



## The court's reaction:

There is nothing wrong with a specialized vocabulary — for use by specialists. Federal district and circuit judges, however, with the partial exception of the judges of the court of appeals for the Federal Circuit (which is semi-specialized), are generalists. \* \* \*

Lawyers should understand the judges' limited knowledge of specialized fields and choose their vocabulary accordingly. Every esoteric term used by the reinsurance industry has a counterpart in ordinary English, as we hope this opinion has demonstrated. The able lawyers who briefed and argued this case could have saved us some work and presented their positions more effectively had they done the translations from reinsurancese into everyday English themselves. \*\*\*

Video Source: **U. of Virginia School of Law**

## United States Court of Appeals for the District of Columbia Circuit Senior Judge Silberman on Acronyms

SILBERMAN, *Senior Circuit Judge*, concurring: I join Judge Edwards' opinion because of the emphasis he puts on the timing of these different projects, but I do think Judge Brown has a good point in suggesting that the "cumulative impact" issue is a stronger ground upon which to base the decision.

\* \* \*

Petitioner's brief, unfortunately, was laden with obscure acronyms notwithstanding the admonitions in our handbook (and on our website) to avoid uncommon acronyms. Since the brief was signed by a faculty member at Columbia Law School, that was rather dismaying both because of ignorance of our standards and because the practice constitutes lousy brief writing.

The use of obscure acronyms, sometimes those made up for a particular case, is an aggravating development of the last twenty years. Even with a glossary, a judge finds himself or herself constantly looking back to recall what an acronym means. Perhaps not surprisingly, we never see that in a brief filed by well-skilled appellate specialists. It has been almost a marker, dividing the better lawyers from the rest.

We have recently been rejecting briefs that do not adhere to our instructions, and counsel should be warned that if a brief is rejected and has to be rewritten, they will not be able to alter the word limits.

*Del. Riverkeeper Network v. Fed. Energy Regulatory Comm'n*, 753 F.3d 1304 (D.C. Cir., 2014)

# Welcome to Now

"Like letters and contracts, complaints tend to be a repository of ancient prose. Write these documents in twenty-first-century style. This is, after all, the century in which you are filing your complaint."

Source: Stark, **Writing to Win: The Legal Writer**

# Other Fields, Other “Secret Handshakes”



...The best way to read “Playing Changes” is with YouTube and Spotify fired up on your laptop. Chinen has excellent taste in unruly new sounds and big, bent ears, and you’ll want to make a playlist. You’ll also want to hear and see what he’s talking about.

You may *need* to hear and see what he is talking about because, reading him, you sometimes have no idea. He has a fondness for academic jargon and can sound like Jacques Derrida in sophisticated sneakers.

He writes about “tracing a historicist agenda that actualized in the 1970s.” The composer Anthony Braxton’s music “utilized proprietary strategies.” Vijay Iyer’s dissertation “helped frame his personal interface with the piano.” The saxophonist Joshua Redman “prioritized an agenda of direct emotional clarity.” Sentences like these prioritize an agenda of not being able to stay entirely awake....

# This Time, *You're* the Customer!



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**COMMENCE IMMEDIATE  
AVOIDANCE OF ALL  
JARGONIZATION  
PROCESSES**



# He Calls it “Cognitive Ease.” You Can Call It...

## How to Write a Persuasive Message

“Suppose you must write a message that you want the recipients to believe. Of course, your message will be true, but that is not necessarily enough or people to believe that it is true. It is entirely legitimate for you to enlist cognitive ease to work in your favor, and studies of *truth illusions* provide specific suggestions that may help you achieve this goal.

“The general principle is that anything you can do to reduce cognitive strain will help...

...

“If you care about being thought credible and intelligent, do not use complex language where simpler language will do. My Princeton colleague Danny Oppenheimer refuted a myth prevalent among undergraduates about the vocabulary that professors find most impressive. In an article titled ‘Consequences of Erudite Vernacular Utilized Irrespective of Necessity: Problems with Using Long Words Needlessly,’ he showed that couching familiar ideas in pretentious language is taken as a sign of poor intelligence and low credibility.”

Source: Kahneman,  
**Thinking, Fast and Slow**

# WHY ARE YOU SHOUTING?

## BUYER'S REPRESENTATIONS

6.1 *Condition of Acquired Assets.*<sup>22</sup> THEREFORE, BUYER IS TAKING THE ACQUIRED ASSETS IN AN "AS—IS, WHERE—IS, WITH—ALL—FAULTS—AND—ENCUMBRANCES" CONDITION EXISTING AS OF THE CLOSE OF ESCROW, BASED UPON BUYER'S OWN FAMILIARITY THEREWITH AND NOT UPON ANY STATEMENTS, ADVICE, OPINIONS OR REPRESENTATIONS WHICH MAY HAVE BEEN MADE BY SELLER OR SELLER'S AGENTS. THE SALE OF THE ACQUIRED ASSETS IS MADE WITHOUT COVENANT, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED IN FACT OR LAW, AND BUYER WILL HAVE FULL RESPONSIBILITY FOR ASCERTAINING ALL MATTERS PERTAINING TO THE ACQUIRED ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE CONDITION OF TITLE OF THE ACQUIRED ASSETS. ALSO WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WITH RESPECT TO ANY AND ALL REAL PROPERTY TRANSFERRED PURSUANT TO THIS AGREEMENT BUYER WILL HAVE FULL RESPONSIBILITY FOR ASCERTAINING ALL MATTERS PERTAINING TO SUCH REAL PROPERTY, INCLUDING BUT NOT LIMITED TO (I) FINANCIAL, ECONOMIC, MECHANICAL, ARCHITECTURAL, ENGINEERING, STRUCTURAL, HAZARDOUS MATERIALS WASTE CONDITIONS; (II) THE IMPACT OF WATER, SEWER AND UTILITY CHARGES, FEES, TAXES, PERMITS, REQUIREMENTS AND BUSINESS LICENSES; (III) ZONING AND SOILS CONDITIONS; (IV) THE USE TO WHICH THE REAL PROPERTY CAN BE PUT; (V) THE EXISTENCE OR PRIOR EXISTENCE OF ABOVE OR BELOW-GROUND STORAGE TANK(S); (VI) THE ENVIRONMENTAL CONDITION; (VII) THE EXISTENCE OR PRIOR EXISTENCE ON OR UNDER THE REAL PROPERTY OF ANY HAZARDOUS MATERIAL OR ANY SPILL, DISPOSAL, DISCHARGE, RELEASE, LEAK, ACCIDENT OR INCIDENT RELATING TO HAZARDOUS MATERIAL CONTAMINATION; (VIII) THE EXISTENCE OR PRIOR EXISTENCE ON OR UNDER THE REAL PROPERTY OF ANY ASBESTOS—CONTAINING MATERIALS OR ANY TRANSFORMER, FLUORESCENT LIGHT FIXTURES WITH BALLAST, OR OTHER EQUIPMENT CONTAINING PCB's; (IX) THE CONFORMANCE OF THE REAL PROPERTY TO ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR AGENCY; (X) DEED RESTRICTIONS; (XI) THE LEGALITY OF LOT SIZE; (XII) THE CONDITION OF THE REAL PROPERTY; AND (XIII) ANY AND ALL OTHER MATTERS PERTAINING TO SUCH REAL PROPERTY.

Not for Further Distribution

Source: Kuney, **The Elements of Contract Drafting**



# “Technically Speaking...”

"When a writer does need to use a technical term, then he or she should consider whether to explain or define it, or provide examples. This decision on how much detail to include is probably the toughest call in drafting. It often depends on who the intended readers are and how difficult or unusual the term is. You would not define *indemnify* in a commercial contract between business parties. But you probably should in a consumer contract, such as a car rental."

Source: Kimble,  
**Writing for Dollars,  
Writing to Please**

# Two Versions: Regulations

## *Before:*

- § 95.455 Authorized frequencies.
- § 95.457 Policy governing the availability of frequencies.
- § 95.437 Limitations on antenna structures.
- § 95.511 Transmitter service and maintenance.
- § 95.613 Transmitter power.
- § 95.509 External radio frequency power amplifiers prohibited.

## *After:*

- § 95.407 On what channels may I operate?
- § 95.408 How high may I put my antenna?
- § 95.409 What equipment may I use at my CB station?
- § 95.410 How much power may I use?
- § 95.411 May I use power amplifiers?

Source: **Title 47, CFR**

# Two Versions: A Services Contract

## *Before:*

3. The CONSULTANT agrees to fully complete the described assignment and furnish same to the DEPARTMENT by \_\_\_\_\_ calendar days after notification of Approval, it being fully understood and agreed by the parties hereto that in the event the CONSULTANT shall fail to do so as aforesaid, the DEPARTMENT shall, without the necessity of notice, terminate the services of said CONSULTANT without incurring any liability for payment for services submitted after said due date or shall deduct, as a liquidation of damages, a sum of money equal to one-third of one percent (1/3 of 1%) per calendar day of the total fee if the performance of the entire contract is delayed beyond the due date. Upon written request by the CONSULTANT an extension of time may be granted by the DEPARTMENT in writing, in the event the CONSULTANT has not received from the DEPARTMENT proper information needed to complete the assignment or, in the event other extenuating circumstances occur, the time may be similarly extended. It is further agreed that if a liquidation of damages is imposed pursuant to the aforesaid provisions, any money due and payable to the DEPARTMENT thereby may be retained out of any money earned by the CONSULTANT under the terms of this contract.

## *After:*

### **5. Due Date for the Work.**

The Consultant must complete and deliver the work by \_\_\_\_\_ calendar days after receiving notice that the Department has approved this contract. The Consultant may ask in writing for more time, and the Department may grant it in writing, if:

- (a) the Consultant does not receive from the Department the information needed to complete the work; or
- (b) there are other extenuating circumstances.

### **6. If the Consultant Misses the Due Date.**

If the Consultant fails to deliver the work by the due date, the Department may—without having to give notice—choose either one of the following:

- (a) terminate the Consultant's services, and not pay for services that are submitted after the due date; or
- (b) claim liquidated damages of 1/3 of 1% of the total contract payment for each calendar day late, and subtract this amount from the total payment.



# Is There a Clearer Way?

**5.4 Termination Fees Payable by Pantheon.** The Merger Agreement obligates Pantheon to pay to OJM an Initial Termination Fee if (a) (i) OJM terminates the Merger Agreement because of either a Withdrawal by Pantheon or Pantheon's failure to comply (and to cure such noncompliance within 30 days' notice of the same) with certain Merger Agreement covenants relating to the holding of a stockholders' meeting, the solicitation of proxies with respect to the Pantheon Proposal, and the filing of certain documents with the Secretary of State of the State of Delaware, (ii) Pantheon terminates the Merger Agreement prior to the approval of the Pantheon Proposal by the Pantheon stockholders, upon Pantheon having received an Acquisition Proposal and the Pantheon Board having concluded that its fiduciary obligations under applicable law require that such Acquisition Proposal be accepted, or (iii) either party terminates the Merger Agreement because of the failure of Pantheon to obtain stockholder approval for the Merger Agreement and the transactions contemplated thereby at a duly held stockholders' meeting, and (b) at the time of such termination or prior to the meeting of the Pantheon stockholders there has been an Acquisition Proposal involving Pantheon or certain of its significant subsidiaries (whether or not such offer has been rejected or withdrawn prior to the time of such termination or of the meeting).



# Yup.

**4. Termination Fees Payable by Pantheon.** The Merger Agreement obligates Pantheon to pay to OJM an initial termination fee of \$250 million if both of the following conditions are met:

(A) any of the following occurs:

- (1) OJM terminates the merger agreement because Pantheon's board withdraws its support of the merger or because Pantheon fails to comply (and fails to properly cure its noncompliance within 30 days of receiving notice) with its merger-agreement covenants relating to the holding of a stockholders' meeting, the solicitation of proxies on the Pantheon proposal, and the filing of certain documents with the Delaware Secretary of State;
- (2) Pantheon terminates the merger agreement before the Pantheon stockholders approve the Pantheon proposal, upon Pantheon's having received a business-combination offer involving at least 15% of Pantheon's stock and the Pantheon board's having concluded that its fiduciary obligations under applicable law require acceptance of that proposal; or
- (3) either party terminates the merger agreement on grounds that Pantheon has failed to obtain stockholder approval for the merger agreement and the related transactions at a duly held stockholders' meeting; and

(B) at the time of the termination or before the meeting of the Pantheon stockholders, there has been a business-combination offer involving at least 15% of Pantheon's stock or of its significant subsidiaries (whether or not the offer has been rejected or withdrawn before the termination or of the meeting).

Source: Garner,  
**Legal Writing in  
Plain English**

# Your Tiny Club...

“(W)hen you enter graduate school you enter into a tiny clique, a sub-sub-sub-set of your discipline. Your estimate of the breadth of the knowledge of the people you are writing for gets radically miscalibrated. Highly idiosyncratic ideas are discussed as if they are common knowledge, and you lose the sense of how tiny a club you have joined. And you’re in terror of being judged naive and unprepared, and so you signal in your writing that you’re a member of this esoteric club.”

*Steven Pinker*

**“I guess for the *public* it’s nice...”**

***CLE Attendee***

It's not “dumbing down.”

It's “clearing up.”

# **“How Do I Say It?”**

## **The (Occasional) Value of Vagueness**

“The passive voice  
should never be used.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**





**Amee Vanderpool** @girlsreallyrule · 44m

MUST WATCH: Ben Carson is actually pinning all of this on his wife: "I left it with my wife. I said, 'help choose something' ... The next thing that I, quite frankly, heard about it, was that this \$31,000 table had been bought."



**NBC News**



Not for Further Distribution

# *VW Engineers Wanted O.K. From the Top for Emissions Fraud, Documents Show*

...

“An internal summary of the meeting, reviewed by The Times, said, ‘The situation regarding technology was acknowledged, and the implementation of the presented measures was confirmed.’”

# Five Reasons to Consider a Passive Construction

1. When the action is more important than the actor.
2. When you don't *know* who the actor is.
3. When you *know*, but you'd rather not say.
4. When ending with the actor helps you stick the landing.
5. When you're hoping to pretend that no human beings were even remotely involved in this incredible screw-up.



# Johnson | Passive Panic

## In partial defence of an unloved grammatical tool

PITY the passive voice. No feature of the grammar of English has such a bad reputation. Style guides, including that of *The Economist*, as well as usage books like the celebrated American “Elements of Style”, warn writers off the passive, and automated grammar-checkers often suggest that passive clauses be redrafted. There are just two problems with this advice. One is that a diminishing proportion of the world’s pundits seem to know what the passive voice is. And the other is that the advice is an unwieldy hammer, when not every writing problem is a nail.

The proper brief against the passive is twofold. One is that it can obscure who did what in a sentence. Barack Obama said recently that “There is no doubt that civilians were killed that shouldn’t have been,” the passive voice hiding who did that killing: drones under the president’s command. Donald Trump, the presumptive Republican nominee to replace Mr Obama as president, tried to slip away from the controversy of his racist comments about a Mexican-American judge: “Questions were raised” about the judge’s impartiality, said Mr Trump. Who raised those questions? Why, Mr Trump.

The other criticism of the passive voice is that it recurs in the worst kind of prose: leaden academic and bureaucratic writing in particular. A scientific paper often describes how “Participants were selected for certain characteristics...it was noted that they behaved in a certain way...results were analysed...” Besides being dull, these relentless passives make the process seem oddly disembodied, as though the research somehow performed itself.

But critics of the passive often go wrong. Stephen King, a horror novelist, in an entertaining rant against the passive in his autobiography, refers to it several



times as the “passive tense”. It isn’t a tense. Tense has to do with when things happen in time. Voice structures who did what to whom in a sentence. In the typical active sentence, the subject is the doer of the action: he kicked the ball. In the typical passive sentence, the recipient of action becomes the subject: the ball was kicked.

Where critics have gone wrong is in diagnosing all kinds of vagueness as passive voice, even when there’s no grammatical passive to be found. Mark Carney, governor of the Bank of England, said recently that “there are no immediate plans for the £50 note...” The feedback is that the notes need to be smaller; different sizes, but smaller.” A critic in America’s *National Review* carped: “Excellent use of the passive voice, Governor.” Except that there is no passive at all: “there are no immediate plans...the feedback is...” may be flabby, but passive they aren’t.

The problem is in confusing action and

vigorous writing with the active voice, and weak, vague sentences with the passive. Voice has little to do with content. “The journalist dozed on his desk” is active. “London was destroyed by aliens” is passive. Nor is clarity always an issue. The active voice can be vague: “Someone ate my cake.” The passive can be quite clear: “My cake was eaten by the neighbours’ kids.” (Only the “short passive” omits the miscreant: “The cake was eaten.”)

The passive can be useful. “I’ll never forget the day my pet hamster was run over” emphasises the speaker’s emotion, and the poor hamster. Only if the villain needs emphasising should this be “I’ll never forget the day Steve ran over my hamster.” And the passive can be good for connecting things: “Jim loved nothing more than his oboe. Then one day it was stolen.” The oboe is the last thing mentioned in the first sentence. While fresh in the readers’ mind, it should be the subject of the second.

The advice needed is stylistic, not grammatical. The problem with the “short passive” is that it can be incomplete: where full information is important, the real advice should be “include all needed information” rather than “never use the passive.” Where passive voices plod one after the other, the writer should vary sentence structure and where the passive results in awkward flow, use sentence structure to link information sensibly for the reader’s sake.

Inexperienced writers can certainly overdo the passive, which can feel “grown up”, serious. Telling them to prefer the active would be good advice. But to demonise a useful grammatical tool takes things too far. Many mistakes have been made in castigating the passive; not to name names, but it is time the language mavens improved their advice.

Source: **The Economist**

# You Try It: Unnecessary Passives to be Eliminated

## Exercise

Rewrite these sentences, omitting surplus words and using the active voice unless you can articulate a good reason for using the passive voice. Supply any missing information that you need. Then look at the exercise key in the Appendix.

1. Trading in the defendant corporation's stock was suspended by the stock exchange at 10:17 the following morning.
2. The bank was not notified by either the depositor or anyone else that the ATM card had been stolen.
3. Dept. of Agriculture Form 9-2018 must be filled in and brought to any USDA branch office before any genetically modified sugar beet seed can be planted in an open field.
4. After 180 days, this Agreement can be terminated by either party.
5. Two kilograms of an unidentified white powder were discovered in the spare tire well of defendant's Volvo sedan.
6. Charitable gifts of appreciated assets can be deducted at their fair market value at the time of the gift, and in that way capital gains tax can be avoided.

Source: Wydick, **Plain English for Lawyers**

**“The deliberate creation of conscious ambiguity...”**

***Paul Z., Longtime Attorney***



*Obfuscation Has Its Place.  
(But Not Every Place.)*

## **Examples of the Three Voices in Writing**

### **1. Active Voice**

“You ate six donuts.”

### **2. Passive Voice**

“Six donuts were eaten by you.”

### **3. Passive-Aggressive Voice**

“You ate six donuts and I didn’t get any. Don’t worry, it’s cool. I can see donuts are very important to you.”

Source: **Someone on the web**

# **“How Do I Say It?” Going for Brevity**

“The longer the sentence,  
the more useful  
the information.”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# Word Counts?

I can give you ten words that move like this.

An alternative approach abides by identical restrictions, yet resonates differently.

**“When I finish writing something and *I’m* really pleased with it, I know I’ve written too much for my non-lawyer audience.”**

*CLE Attendee*



# Details: Necessary or Un-?

"On February 12, 2010, at or about 3:00 p.m., while showering, Plaintiff fell to the floor when her bathroom ceiling collapsed, striking her on the head. On February 12, 2010, at 4:06 p.m., paramedics took her, unconscious, to the hospital.

"On February 13, 2010, Plaintiff sued the apartment owner, alleging negligence and gross negligence in failing to maintain the premises. On March 6, 2010, Plaintiff visited Dr. Eugene Higginbotham, an orthopedic surgeon, who...[etc.]"

# Details: Have You Given Up Anything Important?

Or...

"In February 2010, while showering, Ms. Walker fell to the floor when the bathroom ceiling collapsed, striking her on the head. An hour later, paramedics took her, unconscious, to the hospital, where she was diagnosed with a herniated disk.

"The next day, Ms. Walker sued the apartment owner, alleging negligence and gross negligence in failing to maintain the premises. She then visited Dr. Eugene Higginbotham, an orthopedic surgeon, who...[etc.]"



# You're Dating Yourself...

## Before:

Plaintiff was injured when she slipped and fell on kiwifruit at the Shop Rite Supermarket on February 16, 2015. On July 25, 2015, her doctor diagnosed a herniated disk in her lower back. From July 5, 2015 until the present she has been receiving treatment for this condition. On January 5, 2016, Plaintiff sued Shop-Rite, alleging negligence and gross negligence in maintaining the premises. On September 14, 2016, a jury trial began. On September 15, 2016, the jury returned a verdict in favor of Shop-Rite. On September 16, 2016, the trial court entered a judgment on the verdict. On October 3, 2015, Plaintiff filed a motion for a new trial, which was denied on October 5, 2015. On October 26, 2015, Plaintiff filed a timely notice of appeal.

# Not Any More.

## After:

On February 16, 2015, Harrison allegedly slipped and fell on kiwifruit at the Shop-Rite Supermarket. More than five months later, her doctor diagnosed a herniated disk in her lower back. Harrison sued Shop-Rite, alleging negligence and gross negligence in maintaining the premises. A jury returned a verdict in favor of Shop-Rite, and the trial court entered judgment on the verdict. After the court denied Harrison's motion for a new trial, she timely appealed.

# “Better 1? Or 2?”

1. If you don't respond, the court will issue a default judgment.
2. If you don't respond, the court will issue a default judgment. That means you'll lose, and the court will give the plaintiff what he is asking for.

Source: Trudeau, **The Public Speaks: An Empirical Study of Legal Communication (2012)**



A “Most Valuable Writing/Editing Tip”

“Take the time to make it shorter.”

*Someone in This Very Class!*



# You Try It: Do You Need All 84 of These Words?

## *Before:*

Furthermore, 10b-7 prohibits anyone from stabilizing a security at a price higher than the current independent bid price for such security. However, no court has yet determined whether the current independent bid price would be the price at the time of the writing of the option or at the time of the exercise of the option. A Rule 10b-7 defense would succeed only if the court interpreted the current independent bid price to be the price at the time of the writing of the option.

## *After?*

# Do You *Really* Need All 84 of These Words? (No.)

## *Before:*

Furthermore, 10b-7 prohibits anyone from stabilizing a security at a price higher than the current independent bid price for such security. However, no court has yet determined whether the current independent bid price would be the price at the time of the writing of the option or at the time of the exercise of the option. A Rule 10b-7 defense would succeed only if the court interpreted the current independent bid price to be the price at the time of the writing of the option.

## *After:*

Furthermore, 10b-7 prohibits anyone from stabilizing a security at a price higher than the current independent bid price. However, no court has yet determined whether this price would be the price at the time of the option's writing or at its exercise. A Rule 10b-7 defense would succeed only if the court chose the first interpretation.

[56 words]

# Speaking of Which...

Most Difficult Part of the Writing Process:

“Eliminating needless words and being as succinct as possible.”

# Speaking of Which...

Most Difficult Part of the Writing Process:

“Eliminating needless words.”

# Not This, But *This*: Trimming the Fat

## Some Before-and-After Examples

### Example A

**Not this:** This theory is a drastic departure from that put forth by Plaintiff at the time when his experts were deposed by Defendants.

**But this:** This theory differs radically from Miles's earlier one.

### Example B

**Not this:** Since December 2, 2012, certain of Plaintiff's experts have promulgated a new theory regarding the case that had not been expressed by them at the time Defendants were determining which of Plaintiff's experts would be deposed or at the time Defendants deposed Plaintiff's experts.

**But This:** Some of Miles's experts have recently expressed a new theory that was unknown to ~~Pantor~~ when it deposed them.

# Not This, But *This*: Trimming *More* Fat!

## Example C

**Not this:** McDonnell might then rely on publication notice to convey the existence and general terms of the settlement to other potential class members.

**But this:** McDonnell might then rely on publication notice to inform other potential class members.

## Example D

**Not this:** Mr. Sutherlin wholly fails to plead Alger Life Insurance's knowledge of any alleged falsity nor does Mr. Sutherlin plead any intent on the part of Alger Life to defraud.

**But this:** Sutherlin does not allege that Alger Life knew about any falsity of intended to defraud.



# You Try It: Stop Clearing Your Throat

“Inferentially, the decision of the *Champlin* court can be read to stand for the proposition that mere ownership of property in a county does not establish venue where employees operate out of that property only on a sporadic basis.”

# How About This? (Instead of 39 words, 21.)

*Champlin* suggests that a company's merely owning property in a county does not establish venue if employees work there only sporadically.

# You Try It: “Working” Words v. “Connecting” Words

***"A trial by jury was requested by the defendant."***

*[9 words: 4 working, 5 connecting]*

*[Your fix here...]*

***"The ruling by the trial judge was prejudicial error for the reason that it cut off cross-examination with respect to issues that were vital."***

*[24 words: 11 working, 13 connecting]*

*[Your fix here...]*

# And This One...

***"There are three reasons given in the majority opinion for its rejection of the approach taken by the Supreme Court in its earlier decisions with respect to the Confrontation Clause of the Sixth Amendment."***

*[34 words: \_\_ working / \_\_ connecting]*

*[Your fix here...]*

# Zombie Nouns

BY HELEN SWORD JULY 23, 2012 9:15 PM 280



[Draft](#) is a series about the art and craft of writing.

Take an adjective (*implacable*) or a verb (*calibrate*) or even another noun (*crony*) and add a suffix like *ity*, *tion* or *ism*. You've created a new noun: *implacability*, *calibration*, *cronyism*. Sounds impressive, right?

Nouns formed from other parts of speech are called nominalizations. Academics love them; so do lawyers, bureaucrats and business writers. I call them “zombie nouns” because they cannibalize active verbs, suck the lifeblood from adjectives and substitute abstract entities for human beings:

*The proliferation of nominalizations in a discursive formation may be an indication of a tendency toward pomposity and abstraction.*

The sentence above contains no fewer than seven nominalizations, each formed from a verb or an adjective. Yet it fails to tell us *who* is doing *what*. When we eliminate or reanimate most of the zombie nouns (*tendency* becomes *tend*, *abstraction* becomes *abstract*) and add a human subject and some active verbs, the sentence springs back to life:

Writers who overload their sentences with nominalizations tend to sound pompous and abstract.  
Not for Further Distribution

Source:  
**The New York Times**

# You Try It: Verbs Over Nouns

“When making application for a modification of local zoning standards, the inclusion of a summary statement regarding existing conditions is strongly advised.”

“One factor making a contribution to a significant reduction in vehicle-pedestrian accidents is the installation of back-up cameras in most current models.”

Source: Garner,  
**Legal Writing  
in Plain English**





Not for Further Distribution

# **“How Does It Come Across?” Tone & Voice**

**“Above all, make sure you  
always ‘sound like a  
lawyer.’”**

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

# Think About It: What Makes You Sound Like You?

1.

2.

3.

4.

5.

# “Lawyer, Communicating...”



# M-M-M-My Persona

“Your persona should be credible and professionally engaging....This truth terrifies many legal writers, especially more junior ones justifiably nervous about their position in the profession’s food chain.”

Source: Armstrong & Terrell, **Thinking Like a Writer:  
A Lawyer’s Guide to Effective Writing and Editing**

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# One More Time: Understanding Your Readers

- Why does he need the information – and how will he use it?
- What does she already know?
- How much does he *want* to know?
- What language and organization will seem natural to her?

*Adapted from Armstrong & Terrell, **Thinking Like a Writer***

# Meanwhile, Those Readers Are Asking Themselves...

- Will you help me?
- Will you use my time efficiently?
- Are we from the same planet?

*Source: Armstrong & Terrell, **Thinking Like a Writer***

# How do you want to sound?

If you ever find yourself wondering whether your emails sound too anxious, too informal, too compliant, or too *something*, then you're in luck! Grammarly for Chrome\* now includes a tone detector that can help you figure out how your reader might interpret your writing.

You'll now have a second chance to add a little more confidence, friendliness, or whatever the situation calls for *before* you hit send.

# Tone is key to effective writing.

Whether you want to sound friendly (but not informal) or concerned (but not angry), choosing your tone wisely is key to delivering your message effectively.



## **Check yourself**

Steer your message in a better direction when it doesn't sound the way you want it to.



## **Consider your recipient**

Be confident that your audience will react the way you expect them to.



## **Make connections**

Build stronger relationships for a positive and productive work culture.

# How do you want to sound?

By analyzing your word choice, phrasing, punctuation, and even capitalization, Grammarly's tone checker can identify the tone of your message before you hit send.



Disheartening



Accusatory



Unassuming



Curious



Surprised



Disapproving



Worried



Formal



Forceful



Angry



Concerned



Sad



Informal



Encouraging



Regretful



Egocentric



Neutral



Optimistic



Excited

**“If I don’t use words like ‘herein,’ clients will think it could have been written by an intern, and they won’t want to pay the rates we’re charging them.”**

***A. Lawyer***



**“I have never yet met a client who has said, ‘Please write me a letter I don’t understand because then I will think that you are smarter.’”**

***A. Nother Lawyer***

# You Get to Choose...

“Between the extremes of pomposity and slanginess, you have a range of choices about how formal you want your prose to be. Your choice will vary – **or should** – from document to document and audience to audience.”

Source: Armstrong & Terrell, **Thinking Like a Writer:**

(Emphasis added)

Dial it Up, Dial it Down

There's plenty of room between  
“Comes now...”  
and “Yo, it's Sarah...”

# Smythe, Witherspoon & Thistlebottom

JONZE

Instant Survey:

Are you a “So...”  
or a “Therefore...?”

Are you an “And...”  
or a “Moreover...”

# New to You – Yet Strangely Familiar...

“Eighty-seven years back, the people who lived more or less around these parts launched a kind of startup – a new country, actually. Now, one of their biggest motivations in launching this particular startup was ‘liberty’ – and another one was this idea of ‘equality.’”



**Four score and seven years ago, our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal....**

# Person to Person: The *Second* Person

Voting rights law is a bit like environmental law in its complexity and abstraction. Obama understands that challenge, so he walks you through an example he and his team created—a bit like a hypothetical he might have given his law students—that makes his abstract point concrete:

**Barack Obama, *Tyus v. Bosley***

Consider a city in which whites are 50% of the total population, 54% of the voting-age population, and all live on the south side of town; blacks are 50% of the total population,

46% of the voting-age population, and all live on the north side of town. **Also assume that** the city council is comprised of 50 single-member districts of equal population. Twenty five (50%) white-majority wards (proportionality based on total population) presumptively treat the two groups equally; 27 (54%) white-majority wards (proportionality based on voting-age population) do not. In the latter case, the map drawer can only “stretch” the white population to control two additional wards by “fracturing” black population that could have been used to create two additional black wards and putting them in white majority wards.

Addressing the reader in the second person, as Obama does here, is a particularly effective form of persuasion. Sure enough, another fan of this method is one of Obama’s own Supreme Court Justice selections, Elena Kagan, who favors sentence openers like “Suppose” and “Take” in her opinions and dissents.

# Something in this Paragraph is *Not* Illegal...

## **INDICTMENT**

The Grand Jury for the District of Columbia charges:

### **Introduction**

1. The United States of America, through its departments and agencies, regulates the activities of foreign individuals and entities in and affecting the United States in order to prevent, disclose, and counteract improper foreign influence on U.S. elections and on the U.S. political system. U.S. law bans foreign nationals from making certain expenditures or financial disbursements for the purpose of influencing federal elections. U.S. law also bars agents of any foreign entity from engaging in political activities within the United States without first registering with the Attorney General. And U.S. law requires certain foreign nationals seeking entry to the United States to obtain a visa by providing truthful and accurate information to the government. Various federal agencies, including the Federal Election Commission, the U.S. Department of Justice, and the U.S. Department of State, are charged with enforcing these laws.

Man

Guy

**Fellow**

*Gentleman*

*Fella*

*Dude*

Bro

## “Mitt Romney’s Presidential Campaign Stuck in Lukewarm”

“ . . . .

“Republicans also fear that Romney’s scorched-earth strategy may drive down the voter enthusiasm he would need for a fall campaign.

“And that’s why the advice has rolled in, some of it contradictory: to hit Santorum harder; to stop hitting Santorum; to talk up his management experience; to stop running as a manager and start using the language of a movement; . . . even to stop saying ‘enterprise’ when he means ‘business.’ (‘Does anyone know what that means?’ one adviser asked. ‘The public thinks “enterprise” is either a car-rental place or Captain Kirk’s ship. It’s just a lot of annual-report talk as opposed to kitchen-table talk.’)

“ . . . .”

From “Mitt Romney’s Presidential Campaign Stuck in Lukewarm” by Amy Gardner and Rosalind S. Helderman, *The Washington Post*, February 9, 2012.



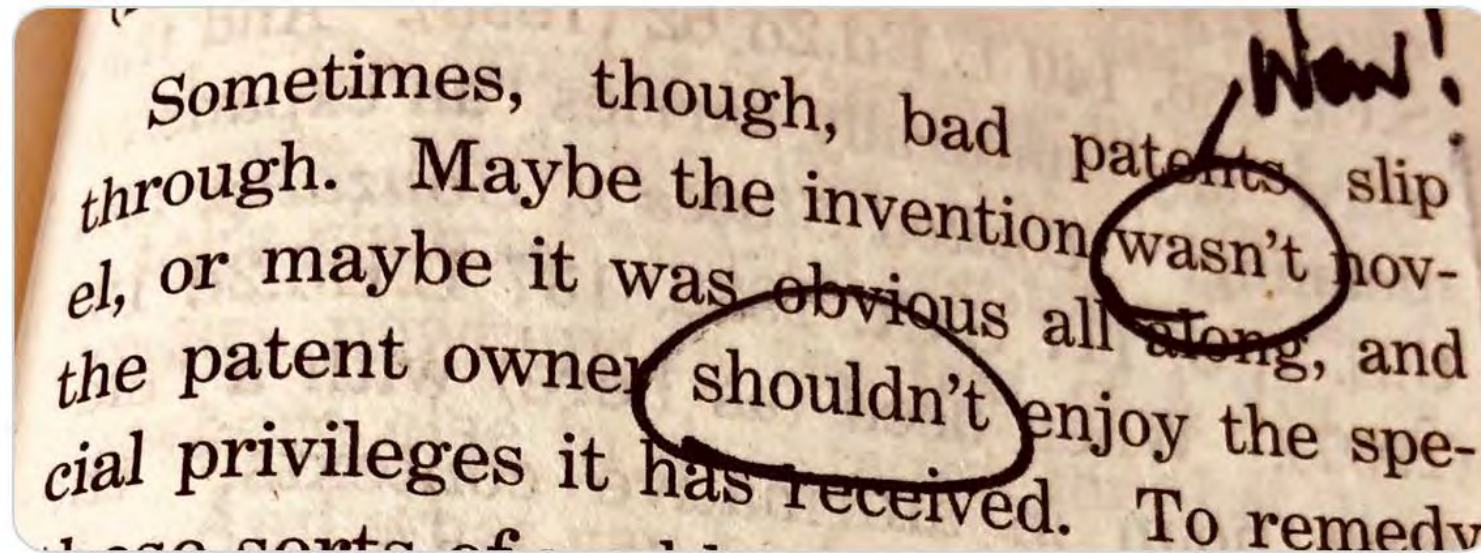




**Bryan A. Garner** ✓  
@BryanAGarner



Justice Gorsuch, bless him, is using contractions in majority opinions. That's new, if not unprecedented. Kagan J. for a long time was using them only in separate opinions. [#gorsuch](#) [#legalwriting](#) [#style](#) See my debate on the subject with Scalia J. in Making Your Case (2008).





# Yet the World Keeps Spinning. (Doesn't It?)



**Mrs. Casanova** @Vic\_Casanova\_ · May 20, 2018

Replying to [@BryanAGarner](#)

I now use contractions in my briefs after hearing you speak at AJEI. I think they're really helpful when it comes to storytelling.



**David D. Ayer** @DavidAyer · May 20, 2018

Replying to [@BryanAGarner](#)

End times



**“We use contractions – but we’re a non-profit.”**

*CLE Attendee*

**“The difference between  
the almost right word  
and the right word is  
really a large matter.  
It’s the difference  
between the lightning  
bug and lightning.”**

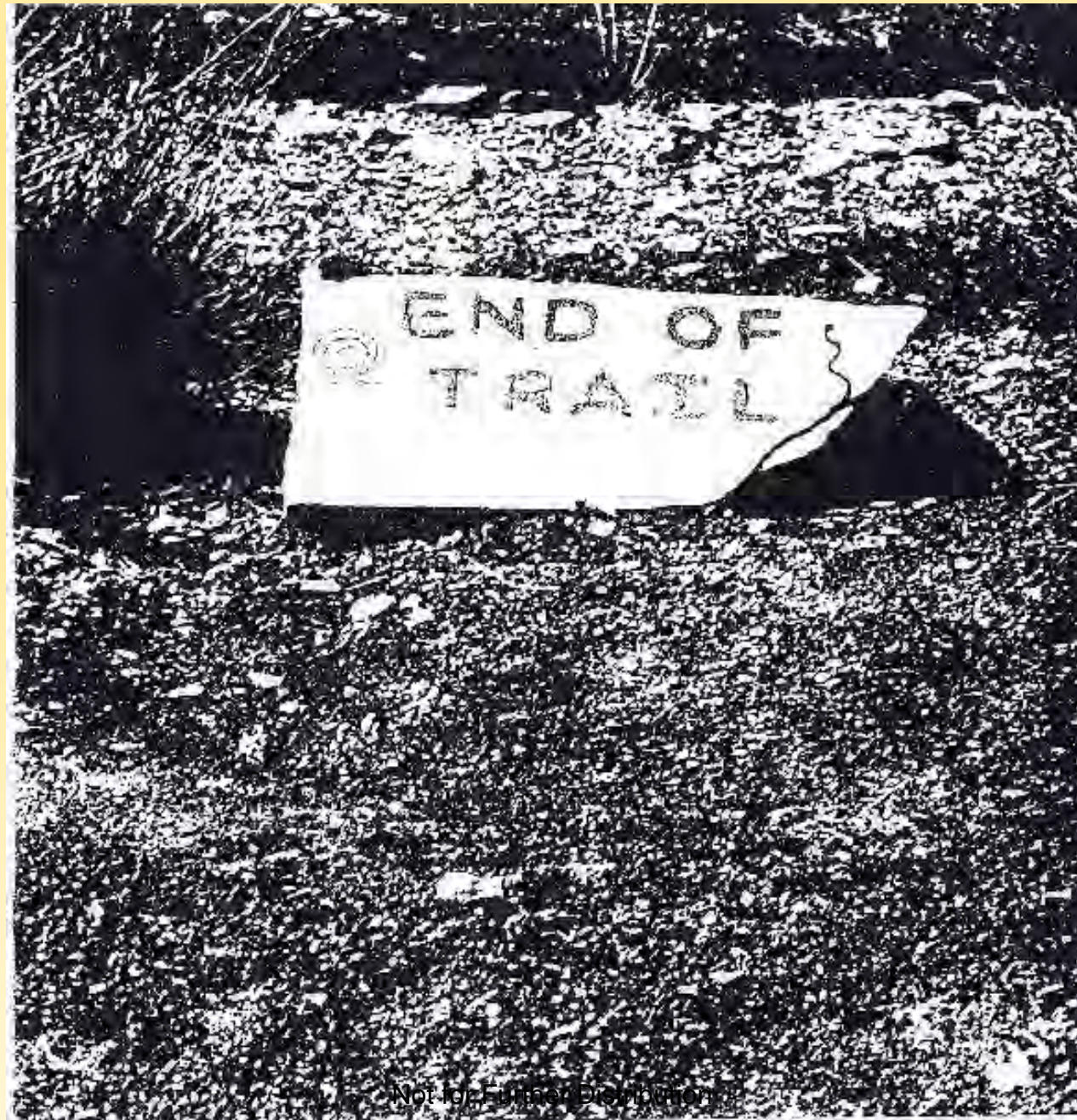
**Mark Twain**



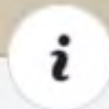
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CNBC.COM

## **Lawyers could be the next profession to be replaced by computers**

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Page 196 of 202

# **“How Does It Come Across?” Catching Those Errors**

# Who Cares?

“On the face of it, my zero-tolerance approach to grammar errors might seem a little unfair. After all, grammar has nothing to do with job performance, or creativity, or intelligence, right?”

“Wrong. If it takes someone more than 20 years to notice how to properly use ‘it’s,’ then that’s not a learning curve I’m comfortable with.”

*Kyle Wiens, CEO*

“I Won’t Hire People Who Use  
Bad Grammar. Here’s Why.”

***Harvard Business Review***

“When you know your stuff,  
why bother with proorfeading?”

**Rick’s Rules of the Road  
for Less-than-Effective Legal Writing**

Every time you  
make a typo,  
the errorists win.

# Helpful Resources for Effective Legal Writing

- Armstrong & Terrell, **Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing** (Third Edition)
- Asprey, **Plain Language for Lawyers** (4th Edition)
- Beazley and Smith, **Legal Writing for Legal Readers**
- Butterick, **Typography for Lawyers: Essential Tools for Polished & Persuasive Documents**
- Evans, **Do I Make Myself Clear? Why Writing Well Matters**
- Garner, **HBR Guide to Better Business Writing**
- Garner, **Legal Writing in Plain English: A Text with Exercises** (Second Edition)
- Garner, **The Redbook: A Manual on Legal Style** (Third Edition)
- Guberman, **Point Made** (Second Edition)
- Horowitz, **Rick's Tips** [Prime Prose Handouts]
- Kimble, **Lifting the Fog of Legalese: Essays on Plain Language**
- Kimble, **Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law**



# And More Resources

- Kolin, **Successful Writing at Work** (Eleventh Edition)
- Krumm, Cooney, Looper, **A Transactional Matter: A Guide to Business Lawyering**
- Kuney, **The Elements of Contract Drafting** (Fourth Edition)
- Markel, **Practical Strategies for Technical Communication** (Second Edition)
- Markel, **Technical Communication** (Eleventh Edition)
- McPhee, **Draft No. 4: On the Writing Process**
- McCulloch, **Because Internet: Understanding the New Rules of Language**
- Neumann, **Transactional Lawyering Skills**
- Painter, **The Legal Writer: 40 Rules for the Art of Legal Writing**
- Stark, **Writing to Win: The Legal Writer**
- Wydick, **Plain English for Lawyers** (Fifth Edition)
- [Video:] Univ. of Virginia School of Law, "**Strategies for Appellate Brief Writing**"  
<https://www.yout1u17be.com/watch?v=2g0zkjcKOcA>