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The Department of Redundancy Department: Concision and Succinctness—Part II

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The Department of Redundancy Department: Concision and Succinctness — Part II

The Legal Writer continues from last month, discussing concision techniques.

"To" Can Be Too Much. "To" can be stilted and legalistic.

Trim "to" stilt: "Cite to the record" becomes "cite the record"; "Help to prepare" becomes "help prepare"; "In a position to" becomes "can"; "In addition to" becomes "and," "besides"; "In an attempt to" becomes "to"; "In an effort to" becomes "to"; "In order to" becomes "to"; "In order for" becomes "for"; "In regard to" becomes "in"; "In relation to" becomes "about," "concerning," "with"; "Is able to" becomes "can"; "Is applicable to" becomes "applies to"; "Is authorized to" becomes "may"; "Is binding upon" becomes "binds"; "Is unable to" becomes "cannot"; "Make application to" becomes "apply to"; "Similar to," "in a manner similar to" become "like"; "So as to" becomes "to"; "Where is he going to?" becomes "Where is he going?"; "With reference to" becomes "about"; "With regard to" becomes "about"; "With respect to" becomes "about," "on."

Lessen "to" legalisms: "Had occasion to" (rephrase or delete); "Is required to" becomes "must"; "Is unable to" becomes "cannot"; "Previous to" becomes "before";¹ "Prior to" becomes "before"; "Proceeded to" becomes "went" (or delete); "Pursuant to" becomes "under"; "Subsequent to" becomes "after," "later"; "To the effect that" becomes "that"; "Unto" becomes "to"; "With a view to" becomes "to"; "With the object being to" becomes "to."

Crush Compound Prepositions. Replace compound prepositions with a more concise expression or word: "in

connection with," "in relation to," "in case of," "in the instance of," "on the basis of."

Prohibit Pleonasm. Pleonasms are unnecessarily full expressions. Pleonasms are double subjects, or nominal appositions: "The court, it held that . . ." Becomes: "The court held that . . ." "The law clerk, who e-mailed me, she likes me." Becomes: "The law clerk, who e-mailed me, likes me."

Use Ellipticisms. Ellipticisms prevent word repetition: "At the estate sale the judge's robes brought \$100, the judge's books brought \$1000, and the judge's gavel brought \$10." Becomes: "At the estate sale the judge's robes brought \$100, the judge's books, \$1000, and the judge's gavel, \$10."²

Mind Your "Manner" Phrases. "He appeared in court in a disheveled manner." Becomes: "He appeared in court disheveled." "She dresses in a grotesque [hasty] manner." Becomes: "She dresses grotesquely [hastily]." "He acted in a negligent manner." Becomes: "He acted negligently" or "He was negligent."

The Nature of Character. Excise "nature" and "character" if you can: "Acts of a hostile nature [or character]" becomes "hostile acts."

Factor Out Degrees. Excise "factor" and "degree" if you can: "Plaintiff relied on [delete the factor of] surprise." "The juror showed [delete a] great [delete degree of] interest in the case."

Mortgage Your Modifiers. If you use vigorous verbs and concrete nouns, you will not need to bolster lifeless verbs and vague nouns with wordy modifiers.

Liquidate Legalisms Forthwith. Whereas some believe that legalisms add content, as noted hereinabove, *supra*, legalisms are amateurish substitutes for clear exposition. You're now forewarned: *Res ipsa loquitur*. As Judge Rosenblatt explained, "The shift in the language of the law has, I submit, taken a healthy turn toward economy and exactitude, with no loss of color. The turgid phrases of yesteryear have undergone some down-sizing."³

In addition to being pretentious, legalisms are unnecessary. Which word can you cut in the following sentences? The empty legalism: "I enclose *herewith* a copy of the court's opinion." (Delete "herewith.") "You're advised *herein* not to use 'herein.'" (Delete the first "herein.") Richard Nixon's resignation letter of August 9, 1974, to Secretary of State Henry Kissinger: "I *hereby* resign the Office of President of the United States." (President Nixon could have deleted the "hereby.") "Defendant has a *prior* conviction." Delete "prior." (The "has" already suggests that defendant doesn't have a future conviction.)

How do you make legal jargon shorter and more concrete? By eliminating legal jargon: "In the instant case" or "in the case at bar" becomes "here" or "in this case." (Or, even better, go right to the facts of your case with a thematic transition.) "The court below" or "the lower court" (name the court, especially if more than one "court below" or "lower court" heard the case).

Abjure Unnecessary Adjectives and Adverbs. Choosing the right, specific vigorous verb or concrete

CONTINUED ON PAGE 51

noun results in brighter, more concise writing. Especially intern intensive adverbs, also called adverbial excesses: “absolutely,” “actually,” “certainly,” “completely,” “extremely,” “greatly,” “obviously,” “plainly,” “really,” “surely,” “truly,” “undoubtedly.” Intensive adverbs exaggerate and bluff. They raise the hackles of the best lawyers: skeptical lawyers.

Adjectives modify. As Mark Twain wrote, “As to the Adjective: when in doubt, strike it out.”⁴ Consider: The sentence “The man is very large” is trivial and verbose. “The man is huge” is memorable and concise. Most descriptive, though, is, “The man is six-feet five-inches tall and weighs 394 pounds.” If you give the man’s height and weight, you needn’t say that he is “very large” or “huge.” Your readers will figure it out for themselves.

Which is stronger: “The allegations are completely untrue” or “The allegations are false”? The latter.

Don’t Lead With Lead. “The books the judge owned were the Official Reports.” *Becomes:* “The judge owned the Official Reports.” “The New York State Office of Court Administration’s new policy resulted in increased morale among nonjudicial employees.” *Becomes:* “The New York State Office of Court Administration’s new policy increased morale among nonjudicial employees.”

Throttle Throat Clearers. Don’t introduce what you plan to write. Just get to the point. Throat clearers, also called metadiscourse, include hundreds of running starts like “The court recognizes that . . .” and “It appears to be the case that . . .” Anyway, if you use preambles like “speaking as a lawyer,” your reader won’t know whether you’re bragging or offering a disclaimer.⁵

Rebut Redundancies. Trim fat, even though a waist is a terrible thing to mind, especially for the nutritional overachiever. A favorite, from Alexander Hamilton: America must

develop “a capacity to provide for future contingencies as they may happen.”⁶ Take stock: As Judge Albert Rosenblatt observed, “a lawyer’s stock in trade [is] the lawyer’s use of words.”⁷ If words are a lawyer’s stock-in-trade, lawyers have an excessive inventory. Talk is cheap. Supply exceeds demand.

Redundancy is the unnecessary repetition of words or ideas. Some redundancies can’t be avoided. One example from the language of the law is “self-incrimination.” “Self-” already means “in.” But try to get legal writers to change the expression to “self-crimination.” Other redundancies are silly. “Excess verbiage,” for example, is redundant because verbiage is excessive by definition.

Here are some wordy phrases that can best be called repetitive redundancies, all from the Department of Redundancy Department: “A period of two years” *becomes* “two years”; “Accidental slip” *becomes* “slip”; “Advance planning” *becomes* “planning”; “Adequate enough” *becomes* “adequate”; “Afford an opportunity” *becomes* “allow,” “let”; “Aggregate total” (either, not both); “All-time record” *becomes* “record”; “Am (is, are) going to” *becomes* “will”; “Any and all” *becomes* “any”; “Appreciate in value” *becomes* “appreciate”; “As of this date” *becomes* “today”; “As yet,” “as of yet” *become* “yet”; “At about” *becomes* “about”; “At an early date” *becomes* “soon”; “At approximately” *becomes* “about”; “At the present time” *becomes* “now”; “At the present writing” *becomes* “at present,” “currently,” “now”; “At this particular point in time” *becomes* “now”; “At the time when” *becomes* “when”; “Audible to the ear” *becomes* “audible”; “Basic fundamentals” *becomes* “basics”; “Because of the fact that” *becomes* “because”; “Both . . . as well as” *becomes* “both . . . and” or “as well as,” without the “both”; “By and through” *becomes* “by”; “By the time” *becomes* “when”; “Class-action lawsuit” *becomes* “class action”; “Close proximity” *becomes* “close,” “near”; “Collide

together” *becomes* “collide”; “Combine together” *becomes* “combine”; “Come in contact with” *becomes* “meet,” “touch”; “Completely finished” *becomes* “finished”; “Complete stop” *becomes* “stop”; “Consensus of opinion” *becomes* “consensus”; “Consequences that would (or will) result from” *becomes* “consequences of”; “Cooperate together” *becomes* “cooperate”; “Current incumbent” *becomes* “incumbent”; “Deliberate lie” *becomes* “lie”; “Divide up” *becomes* “divide”; “Due to the fact that” *becomes* “because” (or, if possible, delete entirely); “Duly noted” *becomes* “noted”; “During the time that” *becomes* “during”; “During such time as” *becomes* “during.”

“Each and every” (either, not both, or “us all”); “Eight in number” *becomes* “eight”; “Enclosed herewith is” *becomes* “enclosed is”; “Endorse on the back” *becomes* “endorse”; “Estimated to be about” *becomes* “about,” “estimate to be,” or “estimated at”; “Every single” *becomes* “every”; “Equally as” *becomes* “as . . . as,” “equally”; “Exactly analogous” *becomes* “analogous”; “Exact same” *becomes* “same”; “Excessive number of” *becomes* “too many”; “False illusion” *becomes* “illusion”; “False misrepresentation” *becomes* “false representation” or “misrepresentation”; “Few in number” *becomes* “few”; “Filled to capacity” *becomes* “filled”; “Final result” *becomes* “result”; “First and foremost” (either, not both; even when “foremost” adds something to “first,” “first and foremost” is a cliché); “Final outcome” *becomes* “outcome,” “result”; “Final destination” *becomes* “destination”; “For the amount of” *becomes* “for”; “For the reason that” *becomes* “because”; “Foreign import” *becomes* “import”; “Forward progress” *becomes* “progress”; “Free gift” *becomes* “gift”; “From and after” (either, not both); “Fused together” *becomes* “fused”; “Future plans” *becomes* “plans.”

“General public” *becomes* “public”; “Good and ready” *becomes* “ready”; “Green in color” *becomes* “green”; “He left on Monday” *becomes* “He left Monday”; “Honest truth” *becomes*

Talk is cheap. Supply exceeds demand.

"truth"; "I would appreciate it if" becomes "please"; "If and only if" becomes "if" or "only if" (except to emphasize or if you mean "if, among other things"); "If and when" (either, not both); "If that is the case" becomes "if so"; "In addition to . . . also" (either, not both); "In many cases" becomes "often"; "In the event that" becomes "if"; "In the month of May" becomes "in May"; "In the near future" becomes "soon"; "In rare instances" becomes "rarely"; "In routine fashion" becomes "routinely"; "Insofar as" becomes "so far as"; "Interpersonal relationship" becomes "relationship"; "Inveigh in strong terms" becomes "inveigh"; "Is currently in progress" becomes "in progress"; "Join together" becomes "join"; "Kills bugs dead" becomes "kills bugs"; "Large in size" becomes "large"; "Large number of" becomes "many"; "Last but not least" becomes "last"; "Logical corollary" becomes "corollary"; "Live audience" becomes "audience"; "Lucrative profits" becomes "profits"; "Mass exodus" becomes "exodus."

"Mix together" becomes "mix"; "More better" becomes "better"; "Most unkindest" becomes "most unkind," "unkindest"; "Mutual cooperation" becomes "cooperation"; "Necessary essentials" becomes "essentials"; "Necessary requirements" becomes "requirements"; "Never before in the past" becomes "never before"; "New innovation" becomes "innovation"; "No doubt but that" becomes "no doubt that," "doubtless," "undoubtedly"; "Nothing whatsoever" becomes "nothing"; "On a daily basis" becomes "daily"; "On a timely basis" becomes "timely"; "On the condition that" becomes "if"; "On the ground that" becomes "because"; "One and the same" becomes "the same"; "One of the purposes" becomes "one purpose"; "One of the reasons" becomes "one reason"; "Ongoing process" becomes "process"; "Old adage" becomes "adage"; "Old proverb" becomes "proverb"; "Over again" becomes "over" or "again"; "Overall total" becomes "total";

"Overexaggerate" becomes "exaggerate"; "Over with" becomes "over"; "Passing phase" becomes "phase"; "Past experience" becomes "experience"; "Past history" becomes "history"; "Period of time" becomes "period," "time"; "Personal belongings" becomes "belongings"; "Personal opinion" becomes "my opinion," "his opinion"; "Personal friend" becomes "friend"; "Plan ahead" becomes "plan"; "Please be good enough to forward" becomes "please send"; "Point of view" becomes "opinion," "perspective"; "Postponed until later" becomes "postponed"; "Proceed ahead" becomes "proceed"; "Provided that" becomes "if."

"Qualified expert" becomes "expert"; "Quite a few" becomes "many"; "Raise the question" becomes "ask"; "Rational reason" becomes "reason"; "Reason why" becomes "reason" or "why" (not both); "Recur again" becomes "recur"; "Remaining balance" becomes "balance"; "Refer back to" becomes "refer to"; "Regard as being" becomes "regard"; "Remand back to" becomes "remand to"; "Repeat again" becomes "repeat"; "Revert back to" becomes "revert to"; "Round in shape," "round in form" become "round"; "Rise up" becomes "rise"; "Sad tragedy" becomes "tragedy"; "Set a new record" becomes "set a record"; "Several in number" becomes "several"; "Shoddy in appearance" becomes "shoddy" (or "appeared shoddy," if you later explain that it really was not shoddy); "Similar to" becomes "like"; "Something else besides" becomes "something else," "besides"; "Small in size" becomes "small"; "Small number of" becomes "small," "few"; "Standard cliché" becomes "cliché"; "Still goes on" becomes "continues," "goes on"; "Still remains" (either, not both, unless you mean that the corpse is not moving); "Strictly forbidden" becomes "forbidden"; "Suffered the loss of" becomes "lost"; "Sufficient number of" becomes "enough"; "Sum total" (either, not both); "Surrounded on all sides" becomes "surrounded"; "Surviving widow" becomes "widow"; "Sworn affidavit" becomes "affidavit."

"Telling revelation" becomes "revelation"; "Temporary respite" becomes "respite"; "Temporary suspension" becomes "suspension"; "Terrible tragedy" becomes "tragedy"; "That we have at hand" becomes "that we have"; "The fact that" becomes "that" (almost all the time); "The reason why" becomes "the reason"; "This morning at 7:15 a.m." becomes "this morning at 7:15," "7:15 a.m.," or "7:15 this morning"; "To all intents and purposes" (replace or delete); "Totally devoid" becomes "devoid"; "True and correct" (either, not both); "True facts" becomes "facts"; "Trusting that this suggestion will" becomes "I hope that"; "Unexpected surprise" becomes "surprise"; "Unsolved problem" becomes "problem"; "Unless and until" (either, not both, or rephrase); "Until such time as" becomes "until"; "Usual custom" becomes "custom"; "Utterly false" becomes "false"; "Visible to the eye" becomes "visible"; "Whether or not" becomes "whether" (except to emphasize or to give equal weight: "The case will be tried whether it rains or not").

Prepositional Phrases. Convert prepositional phrases to adverbs or adjectives: "Are in need of" becomes "need"; "At that point in time" becomes "then"; "At this point in time" becomes "now"; "At your earliest convenience" becomes "as soon as possible" "at once," "immediately," "now," "soon"; "Of extreme importance" becomes "extremely important"; "Of great complexity" becomes "complex"; "On a regular basis" becomes "regularly"; "On many occasions" becomes "often"; and "One of the things" becomes "one thing."

Parallel Language. French was England's official language from the Norman conquest in 1066 until 1385. But the populace continued to speak English. Thus, lawyers began a parallel language.⁸ We have the luxury in modern America to return to our roots by speaking one tongue — English — not both English and French and sometimes Latin, too. Just because something is good enough to say once doesn't mean it's good enough to say

twice. Cease and desist in any way, shape, manner, or form from using doublets, triplets, and quadruplets for the rest, residue, and remainder of your careers. This rule is part and parcel of good legal writing.

Here are some doublets and triplets that can be shortened: "Acknowledge and confess" (either; not both); "Act and deed" *becomes* "contract," "deed"; "Agree and covenant" *becomes* "agree"; "Aid and abet" *becomes* "aid"; "All and singular" *becomes* "all"; "Assuming,

What "of" It?⁹ Try this test. Count the number of Fs:

FINISHED FILES ARE THE
RESULT OF YEARS OF SCIENTIFIC
STUDY COMBINED WITH THE
EXPERIENCE OF YEARS

You counted three, right? Try again. The correct answer is in this endnote.¹⁰ You missed the "f" in the three "of's." People don't see the word "of." That's why "of" is verbiage, to be cut whenever you can. Below are some suggestions:

becomes "whether"; "On the grounds of" *becomes* "because" (and note that if you give one ground, do not use "grounds").

- "Of" abstractions: Excise "type of," "kind of," "matter of," "state of," "factor of," "system of," "sort of," "nature of."

- "Of" negativity: A negative phrase using an "of" *becomes*, with a prefix, a "dis-," "in-," "non-," or "un-." Example: "The lack of consistency" or a "negative" anything *becomes* (depending

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arguendo, that" *becomes* "assuming that" or "if"; "Bind and obligate" *becomes* "require"; "Cancel, annul, and set aside" *becomes* "annul," "cancel"; "Capable and able" (either, not both); "Cease and desist" *becomes* "stop"; "Deem and consider" *becomes* "believe," "find"; "Do and perform" *becomes* "do"; "Duty and obligation" *becomes* "duty"; "Fit and proper" *becomes* "fit"; "Force and effect" *becomes* "force"; "Fraud and deceit" (either, not both, depending on the context); "Free and clear" *becomes* "free"; "Give and grant" *becomes* "give"; "Give, devise, and bequeath" *becomes* "give."

"In any way, manner, shape, or form" (delete); "Keep and maintain" *becomes* "keep"; "Last will and testament" *becomes* "will"; "Made and entered into" *becomes* "made"; "Null, void, and of no effect" *becomes* "null" or "void"; "Order, adjudge, and decree" *becomes* "order" for a legal motion, "adjudge" for a legal judgment, "decree" for equity; "Pardon and forgive" (either, depending on the context, but not both); "Rest, residue, and remainder" *becomes* "balance," "rest," or "all other property"; "Save and except" *becomes* "except"; "Separate and apart" (either, not both); "Shun and avoid" *becomes* "avoid"; and "Et cetera, et cetera, et cetera" (unless you're a "King and I" aficionado).

- Ply your possessives: "This is the opinion of the judge." *Becomes*: "This is the judge's opinion."

- Sentence inversion: "I'm a member of the Association of the Bar of the City of New York." *Becomes*: "I'm a New York City Bar Association member."¹¹

- Nix nominalizations: "He committed a violation of the Penal Law." *Becomes*: "He violated the Penal Law." Nominalizations are verbs converted to nouns. Prefer verbs to nouns and, when in doubt, to strike out adverbs and adjectives.

- All ofs are off course: Delete "of" after "all" ("All of New York loves the New York State Bar Association") and "both" except when a pronoun follows ("all of us studied law"; "both of us studied law").

- Not off of the wall: Delete "of" after "alongside," "inside" (unless you mean "in less than"), "off," and "outside."

- As of: "The attorney has not arrived as of yet." *Becomes*: "The attorney has not arrived yet." Or "The attorney has not yet arrived."

- Off "of" prepositional phrases: "By means of" *becomes* "by"; "During the course of" *becomes* "during"; "For the period of" *becomes* "for"; "For the purpose of" *becomes* "for," "to"; "The issue of (or as to) whether"

on your meaning) "The inconsistency" or "dis-X," "non-X," or "un-X," depending on the word.

- Delete "of" in dates and years: "Ten days of notice." *Becomes*: "Ten days' notice"; "Fifty-one years of age." *Becomes*: "Fifty-one years old"; "July of 2006." *Becomes*: "July 2006" (not "July, 2006").

- "Of which" legalisms: "The stipulation Smith signed, which stipulation provided that . . ." *Becomes*: "The stipulation Smith signed provided that . . ." Or "Smith signed a stipulation providing that . . ."

Legal writing shouldn't be clipped or casual. Explanation and persuasion can take pages, and sometimes volumes. But to make every word tell, don't write 4/8 when you can write 1/2. Whether you design memorable legal argument or architecture meant to last, recall that less is more, more or less. We remember the short and forget the long, assuming we read it at all. ■

1. Note that what "precedes" comes immediately beforehand. Anything earlier is "previous."

2. Even worse than not using ellipsisms is elegant variation: using different words for "brought," such as "sold for," "fetched," or "obtained." For the power and clarity of repetition, see Gerald Lebovits, *The Legal Writer, What's Another Word for "Synonym"?*, 74 N.Y. St. B.J. 64 (Jan. 2002).

3. Albert M. Rosenblatt, *Lawyers as Wordsmiths*, 69 N.Y. St. B.J. 12, 13 (Nov. 1997).

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4. Mark Twain, *The Tragedy of Pudd'nhead Wilson* Ch. 11 (Pudd'nhead Wilson's Calendar) (1894).
 5. For more on throat-clearers, see Gerald Lebovits, *The Legal Writer, Writers on Writing: Metadiscourse*, 74 N.Y. St. B.J. 64 (Oct. 2002).
 6. Alexander Hamilton, *Federalist* 33.
 7. Albert M. Rosenblatt, *Brief Writing and Oral Argument in Appellate Practice* 24 Trial Lawyers Q. 22, 22 (1994).
 8. A remarkable history of the language of the law, from "Before the Normans" to "Law Language

in America," is found at David Mellinkoff, *The Language of the Law* 33-282 (1963).

9. For more on this topic, see Gerald Lebovits, *The Legal Writer, "Of" With Their Heads: Concision*, 73 N.Y. St. B.J. 64 (Nov./Dec. 2001).

10. Six. Example taken from quiz e-mailed to the author

11. Anticipating this column, the Association of the Bar of the City of New York recently changed its name to the New York City Bar Association. Compare <http://www.abcny.org> with <http://www.nycbar.org>.

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