Plain English: Eschew Legalese

Gerald Lebovits
We take the opportunity to recognize Chief Judge Judith Kaye with a tribute to her many accomplishments and the imprint she leaves upon the Court.

by Skip Card

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Don’t escheat your reader.

Good legal documents are free of legalese. Legalese is pettifog: the foreign and formulac way many lawyers write. Legalese drowns the reader and hides gaps in analysis. Legalese is lawyers’ dull turgid jargon. It makes lawyers in analysis. Legalese is lawyers’ dull and turgid jargon. It makes lawyers the butt of jokes. It’s a pseudo symbol of prestige lawyers use to indulge their egos, dominate others, and distance themselves from their lay readership. Legalese leads to interpretations that stray from the author’s intended meaning: Legalese masks meaning. Legalese favors form over content: It forces readers to dig for content. Legalese alienates. Although the best writing is planned, formal speech, legalese deviates from how people speak: Legalese is obscure and wordy.

Lawyers need to filter legalese to create readable documents. Good lawyering means writing in accessible, clear, and efficient language.

The opposite of legalese is plain English. The plain-English movement calls on lawyers to write comprehensively and succinctly. The movement aims to keep legal documents precise and simple. The word “plain” is deceiving. Plain English isn’t “plain” in the aesthetic sense. Nor does plain English dumb down writing. “Plain” denotes logically organized, concise documents that are to the point and visually inviting to the audience. Documents in plain English are understandable on their first read.

To write in plain English, writers must visualize their audience’s interests and needs. This visualization moves writers to give readers only the information they require. Ignoring the audience leads to documents no one wants to read and which don’t inform or persuade. To break bad habits, writers must become reader-oriented. Writers should write for their readers, not themselves. Writers must treat readers like busy professionals. Writers shouldn’t waste their readers’ time or insult them.

Most judges, law professors, lawyers, and clients prefer legalese-free documents. This preference is motivated by the need to read documents without verbiage. Verbiage leads to ambiguity, not only slow reading. With the growing volume of legal work, plain English is critical in today’s environment for both writer and reader.

The Plain-English Movement

The movement to use plain English is traced to the profession’s earliest days. While practitioners have always used legalese, the public has always urged lawyers to write plainly. The movement’s recent wave gathered pace in the 1940s, when Rudolf Flesch published The Art of Plain Talk. The plain-English movement grew in 1960s. In 1963, David Mellinkoff wrote The Language of the Law, a magisterial work in which he tracked language development and its weaknesses. By the 1970s, federal agencies began redrafting regulations into plain English.

This resulted in documents that are easier to understand. New York also mandates plain English in commercial transactions.

Plain English became popular in the legal community in the 1980s. In May 1984, the Michigan Bar Journal began publishing a regular column on plain English. The movement has expanded, but the popularity of plain English has come slowly and painfully. As George Hathaway noted in 1994, “plain English in the law is like safe sex: you never used to hear about it; now you hear about it all the time, but not enough people actually practice it.” Quitting legalese is harder than quitting smoking.

Numerous articles, books, and organizations extol plain English’s virtues. One group of scholars presents annual awards for excellent plain English as well as the Golden Bull Award, “given for the year’s worst examples of gobblisyook.” The legal community tolerates gobbledygook less and less.

Putting Plain English Into Practice

Many lawyers don’t know how to write in plain English. They never unlearned the bad habits they gleaned from the poor role models they read in law school. Although knowledgeable in the law, lawyers — society’s best-paid writers — need to learn more about communication. Plain English requires the writer to take each sentence and ask: “Will this be misunderstood?” “Is this the clearest, most efficient way to write it?” “Is this word necessary?” These questions demand focus on message, respect for audience, and intent to be coherent. Good legal writers “write the document in a way that best serves the reader. They convey ideas with the greatest possible clarity.”

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Many techniques exist to write in plain English. They range from organization, to word choice, to sentence structure. What follows are some tools — suggestions to help writing be effective, readable, and succinct.

**Keep organization tight.** Use headings to break documents into manageable bits. Put related issues together, in logical order. Say it once, all in one place. Put the most important information first. State the general before the specific. Introduce things before you discuss them. Introduce people before you write about them. Minimize cross-referencing. Use thesis paragraphs and topic sentences. State what relief you seek before you say why you want it. Give a full citation before you say what relief you seek. Avoid unnecessary clauses and topic sentences. State the general before the specific. State general issues and arguments, not by cases and statutes.

**Admire the active voice.** The active is less vague than the passive. The active is also shorter and easier to read. In the passive, the sentence’s subject is used as the verb’s receiver. Incorrect: “The respondent was interrupted by the petitioner.” Becomes: “The petitioner interrupted the respondent.” Double passives don’t identify the subject or the actor. Example: “The passive voice is avoided.” Use single passives to connect sentences or end sentences with emphasis. Double passives if the actor is known or identification is unnecessary.

**Cut compound constructions.** A compound construction uses several words when only one or two are needed. Incorrect: “At that point in time the petitioner moved for summary judgment for the reason that no factual issues remained.” Eliminating compound phrases will shorten the sentence. Becomes: “The petitioner moved for summary judgment because no factual issues remained.”

**Reject redundant phrases.** Redundancies include “null and void.” Use “void” instead. If you can say it in one word, don’t use two or three. Other redundancies: “made and entered into” (“made”), “rest, residue, and remainder” (“rest”), “force and effect” (“force”), “last will and testament” (“will”), and “give, devise, and bequeath” (“give”).

**Don’t nominalize verbs.** Nominalized verbs turn into nouns because of an added suffix. Nominalizations make phrases and sentences long and complicated. They also make action abstract; they don’t describe action forcefully. Nominalized verbs end in “al,” “ance,” “ancy,” “ant,” “ence,” “ency,” “ent,” “ion,” “ity,” and “ment.” Examples with auxiliary verbs: “is waiting,” “was reading,” and “were.” They result in phrases like “made the argument that” instead of “argued” and “engaged in a discussion about” instead of “discussed.”

**Use “of” sparingly.** Incorrect: “At issue is the duty of a lawyer to preserve the confidences of a client.” The sentence is more effective without the excess. Becomes: “At issue is a lawyer’s duty to preserve client confidences.”

**Delete lead-ins, called metadiscourse, like “it is well settled that,” “it is hornbook law that,” “it is important to add that,” and “it is interesting to note that.” Noteworthy points speak for themselves.

**Viti ate vague antecedents.** Let the following refer to one person or thing only: “he,” “she,” “his,” her,” “their,” and “its.” To avoid confusion, repeat the word.

**Eliminate elegant variation.** Use the same word to refer to the same thing. Different words have different meanings. Variations will be understood as an intent to distinguish. Incorrect: “The first case was adjourned, and the second piece of litigation was put over to a new date.” Becomes: “The first case and the second case were adjourned.”

**Match modifiers.** Dangling, misplaced, and squinting modifiers confuse. Incorrect: “To practice New York landlord-tenant law, I had to re-learn the doctrines of subinfeudation and petty serjeanty.” Be careful with the word “with.” Incorrect: “I robbed a bank with money.” Becomes: “I used a gun to rob a bank.” Or: “I robbed a bank because it had money.”

**Nix negatives.** People speak and think in the positive. Incorrect: “We have not yet received permission . . . .” Becomes: “Our application is under review.” Also, avoid negative words like “except,” “disallowed” (“dis-” words), “fail to”, “notwithstanding,” “other than,” and “unless” and “unlawful” (“un-” words). And don’t place these words after “not.”

**Seek shorter paragraphs.** Save one-sentence paragraphs for emphasis, but long paragraphs bore readers. A good average for paragraph length is three to five sentences. Paragraphs shouldn’t exceed 250 words, two-thirds of a double-spaced page, or one large thought.

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I easily assume that all law students are uber smart. Example modifying the wrong word: “Although nearly finished, we left the trial because of our client.” Becomes: “Although the trial was nearly finished, we left because of our client.” To place modifiers correctly, keep them next to the word they modify. Misplaced word example: “We almost ate the entire Inn of Court dinner.” Becomes: “We ate almost the entire Inn of Court dinner.” Misplaced clause or phrase example: “I threw the baby down the stairs some candy.” Becomes: I threw some candy down the stairs to the baby.” Squints can modify the word before or after. Example: “To practice New York landlord-tenant law, I only had to re-learn the doctrines of subinfeudation and petty serjeanty.” Becomes: “To practice New York landlord-tenant law, I had to re-learn the doctrines of subinfeudation and petty serjeanty.” Be careful with the word “with.” Incorrect: “I robbed a bank with money.” Becomes: “I used a gun to rob a bank.” Or: “I robbed a bank because it had money.”

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The Legal Writer

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Limit long sentences. Shorter sentences increase understanding. The best sentences have one thought only and 25 words or fewer, ideally between 15 and 18. But vary sentences length to make writing interesting.

Simplify sentence structure. Prefer simple declarative sentences to complex constructions. Put the subject near the beginning in most sentences. But vary sentence structure, like long sentences, to make writing interesting. Avoid connecting sentences with lengthy conjunctive adverbs like “however,” “moreover,” and “therefore.”

Don’t separate subject from predicate. Every complete sentence contains two parts: a subject and a predicate. The subject is what (or whom) the sentence is about. The predicate tells something about the subject. Inserting lengthy qualifiers between subject and predicate frustrates readers. Incorrect: “Enclosed herewith please find . . . .” This common formula serves no purpose. Becomes: “I enclose . . . .” Or: “Enclosed please find . . . .”

Forgo formalisms. Unwanted formalisms include “and/or,” “the instant” case, and “such” and “said” as adjectives.

Advocate for Anglo-Saxon words. Latinisms and romance-language words are proper when they’re terms of art. Otherwise, use foreign words only if an English equivalent is unavailable. Examples to avoid: “ad infinitum” (“forever”), “arguingo” (“for the sake of argument”), “inter alia” (“among others”), “pro rata” (“proportional”), and “to wit” (“namely”).

Toss technical terms. Use them only when writing about a field-specific topic. Example: “holdover” when referring to landlord-tenant proceedings. If you must use technical terms, include a short definition so that your reader knows what you’re discussing. The amount of explanation will vary with your audience and the purpose of your document. If helpful, give examples to illustrate your point.


Mutilate multi-syllabic words. Prefer shorter words with fewer syllables. Shorter words are familiar to readers. They’re read quickly and grasped easily. Examples: “consequent-ly” (“as a result”), “notwithstanding” (“despite”).

Simplify. Incorrect: “Sixty days prior to the expiration of the license . . . .” “Prior to” is clunky. Use the shorter and simpler “before.” Becomes: “Sixty days before the license expires . . . .”

Forgo excessive capitalization, italics, bold, underlining, or strange font styles.

Get Involved With Plain English
Several organizations further plain English. Scribes, an organization of legal writers, was founded in 1953 to honor legal writers and encourage a “clear, succinct, and forceful style in legal writing.” Scribes has developed into a nonprofit, ABA-affiliated organization that publishes a newsletter, The Scribes, a law journal, Scribes Journal of Legal Writing. Clarity promotes clear language in the legal profession. It publishes Clarity, which explores the use of plain English internationally.
The Plain English Campaign, the organization that awards the Golden Bull, is an editing service that publishes Plain English magazine and books. It has more than 10,000 supporters in 80 countries.39

Here's some food for thought to chew on: To eschew legalese, write in plain English. If you write in plain English, you won't escheat your reader.


14. Hathaway, supra note 9, at 19.


19. This example comes from Gerald Lebovits, The Legal Writer, He Said — She Said: Gender-Neutral Writing, 74 N.Y. St. B.J. 64, 55 (Feb. 2002).


23. For additional pointers, see Mark P. Painter, 30 Tips to Improve Readability in Briefs and Legal Documents or, How to Write for Judges, Not Like Judges, 31 Mont. Law. 6, 10 (Apr. 2006).


25. Wydick, supra note 21, at 70 (giving example).


30. Id. (giving example).

31. Wydick, supra note 21, at 11 (giving examples).

32. This example comes from Goldstein & Lieberman, supra note 29, at 110.


34. This example comes from Goldstein & Lieberman, supra note 29, at 110.

35. Id. (giving example).


