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# Writing Like a Contemporary (and Effective Lawyer): The Joys and Pitfalls of Legal Writing

by David H. Spratt

**Legal Writing – 1) style of writing undertaken by a lawyer; 2) a simple phrase that conjures up a vision of a hunched barrister leafing through a thesaurus, then choosing the word that is least likely to be understood by anyone who hasn't had the privilege of spending a small fortune on a law school education.**

When most lay people hear the term “legal writing,” a definition such as the imaginary one above springs to mind. This is a troubling and unfortunate reality. Why do lawyers write in a way that only their legal brethren (a/k/a “partners in crime”) can understand? Does spewing legalese and archaic words and phrases help a lawyer to better advance his client's objectives? Not in 2005, or even in 1865, I would argue. Or, when using legalese, do some lawyers simply want their clients to be confused and think, “My lawyer must be smart if he uses words like heretofore and aforementioned”?

If you graduated from law school in the last 15 years, perhaps you never learned to “write like a lawyer” of yesteryear, as most current legal writing textbooks and law schools are now teaching law students to express themselves clearly and concisely by using everyday words and phrases. If, however, your legal writing style serves to confuse the general population and sounds like it was written by a wigged barrister using a quill pen while hunched over a Dickensian desk,<sup>1</sup> then I hope this

article may offer some long overdue assistance.

There are a number of humorous and informative legal writing textbooks on the market today – all offering pointers and advice on how to write like a contemporary lawyer, i.e., a lawyer whose writing can be easily understood by the masses. This article does not provide an exhaustive overview of legal writing tips, but instead a “best practices” selection that, when committed to memory and followed, will make you a better legal writer, and, by extension, a better lawyer:

## **1. Streamline Your Presentation: Eliminate Excess Words.**

Need to shorten a document to avoid violating a local court rule? Look for words or phrases that add little, if any, substance to your analysis, and delete them. Rid your memos, briefs and other documents of excess words, i.e., throat-clearing phrases, space-filler words – words that can be removed without sacrificing content; many of these phrases begin with the word, “it,” and end with the word, “that.”

**“It is clear that” or “It is evident that”:** If the point is evidently clear, then your reader should understand without an unnecessary preamble.

**“It is interesting to note that”:** It might be really interesting, but make your statement clearly and concisely, and your reader will determine the true level of interest.

**“Defendant contends that”:** Just make your argument; the same objectives can be achieved without

resorting to this unnecessary phrase.

## **2. “If I've said it once, I've said it far too many times”: Avoid Legalese.**

Hereinabove, the party of the first part (hereinafter referred to as “I”) admonished the party of the second part (hereinafter referred to as “you”) to utilize a learned vocabulary that could be readily comprehended by commoners.

Follow said advice. A lawyer's words should not differ without reason from the words used in ordinary English.<sup>2</sup>

## **3. Make Sure Your Reader Can Follow Your Logic and Analysis.**

Thoroughly explain your reasoning, thought process, and conclusions. Do not force your reader to jump to a conclusion, but instead, through proper analysis and application of the law to the facts of your client's case, show the reader how you ended up where you did.

Always assume that your reader knows little or nothing about the law as applied to the current case. Convey to your reader your interpretation of the law in clear and concise language. When you discuss a court decision, the reader should be given sufficient detail about the opinion so that she will not need to actually read the case, i.e., its relevance to the discussion should be perfectly clear. A judge will have neither the time nor the inclination to read a cited case that has not been explained in the text.

#### 4. Stay Focused on the Task, Idea, or Topic at Hand.

Put your conclusions first. The basic rule of expository writing is: *Tell your readers what you are going to say. Say it. Tell them what you just said.* Putting the conclusion first creates a “road map” in the reader’s mind. Often the conclusion at the end will be more concrete or more emphatic than the conclusion at the beginning.

Write well-organized paragraphs. As a rule, paragraphs should generally be longer than one sentence. Every paragraph should present one major idea. A paragraph works well when the topic sentence states the idea, and the remaining sentences develop that idea, building on context or information contained in the previous sentences.

Make your main themes stand out in your document by using topic sentences. You can omit a topic sentence when the general idea of the paragraph is clear to the reader or is set forth in a heading or subheading. Err on the side of including topic sentences. Make sure that the discussion part of your paragraph supports and develops the topic sentence. Avoid extraneous and off-topic sentences.

#### 5. She Who Says it Best Says it Succinctly.

If one word says it best, don’t clutter up the text with additional words that mean the same thing. Lawyers have a propensity for using more than one word to do the job of one word. Eliminating words that have similar or identical meanings is yet another way to meet those pesky page number requirements imposed by your local court.

in light of the fact that:  
**because**  
in the event that: **if**  
with reference to: **about,**  
**concerning**  
at that point in time: **then**

he was aware of the fact that:  
**he knew that**  
same exact: **same, exact, identical**  
null and void: **null, void**  
adjudged, ordered and decreed:  
**adjudged, ordered, decreed**  
full and complete: **full, complete**

Don’t these words mean the same thing? How does one add to the other? Too many cooks spoil the broth – don’t use multiple words when one word can do the trick.

#### 6. Use Transitions.

Next, create continuity by arranging your ideas in a logical or chronological order and by using transitional words—for example, however, therefore, in addition, consequently, in contrast, and moreover— and by repeating words and ideas that you have used in earlier sentences and paragraphs for emphasis. On this side of the Atlantic, use *First*, *Second*, and *Third*, not *Firstly*, *Secondly*, and *Thirdly*.

#### 7. Use Quotations Sparingly.

Don’t overly rely on quotes taken from case law. The Commonwealth of Virginia judiciary notwithstanding of course, most case law is not a model for good legal writing. Do not mistakenly assume that paraphrasing a holding will result in a less clear, more convoluted presentation. If you must quote (and sometimes you will need to), remember that periods and commas go inside the end quotation mark!

#### 8. Edit Until the Cows Come Home (or at least until you have to rush to court).

Assume you won’t get it right the first time. Write as many drafts as time permits, and allow time for final editing. Good writing requires more than one draft. Your rule of thumb should be to go through at least two drafts, if not more.

Make sure that your document does not contain spelling errors. If you don’t know how to spell a word, look it up in the dictionary. In the

age of spell check, spelling errors are intolerable, but spell check programs are not a foolproof panacea. Computer programs do not catch every word (e.g., words which are actual words but which are still typographical errors—from instead of *form*; *trail* instead of *trial*).

#### 9. Follow Local Court Rules and Rules of Citation.

Follow the local court rules for procedure and format – there is a reason that courts have rules, so respect them. Conform to correct citation format. Make sure that you have the newest edition of the “Bluebook.” If you don’t know what a “Bluebook” is, buy one of the texts recommended in number 10.

#### 10. Invest in a Legal Writing Bible.

For more information and even more legal writing tips and examples, order one of these books (and there are many other, equally worthy legal writing handbooks):

Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2d ed. 2001);

Mark P. Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* (2d. ed. 2003); and

Richard C. Wydick, *Plain English for Lawyers* (5<sup>th</sup> ed. 2005).

It is never too late to teach an old dog some new and more contemporary legal writing tricks. Continue your lifelong love affair with writing, spelling, punctuation, grammar and editing, and stop “writing like a lawyer.” **VBA**

#### NOTES

1. Mark P. Painter, *The Legal Writer: 40 Rules for the Art of Legal Writing* 92 (2d. ed. 2003).

2. Richard C. Wydick, *Plain English for Lawyers* 4 (5th ed. 2005).

**ABOUT THE AUTHOR**

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