

# LEGAL WRITING IN ENGLISH

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## **UNIT ONE**

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## Resources (and sources for these slides)

- Richard C. Wydick, *Plain English for Lawyers* (5<sup>th</sup> ed. 2005)
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* (3<sup>rd</sup> ed. 2009)
- Paula LaRocque, *The Book on Writing: The Ultimate Guide to Writing Well* (2003).
- Martin Curtis, *Oxford Guide to Plain English* (3<sup>rd</sup> ed. 2009).
- William Zinsser, *On Writing Well* (7<sup>th</sup> ed. 2006)

# Web resources

- **Legalwriting.net**
- Wayne Schiess's Legal-Writing Blog:
- <http://www.utexas.edu/law/faculty/wschiess/legalwriting/>
- **Plain Language Association International**
- (List of websites offering resources on legal writing in Plain English)
- <http://www.plainlanguage.network.org/Legal/index.html>
- **PlainLanguage.gov**
- U.S. Government website on Plain English
- <http://www.plainlanguage.gov/>

## Web resources, continued

- **Michigan State Bar Association**
  - Plain language articles
  - <http://www.michbar.org/generalinfo/plainenglish/columns.cfm>
- **U.S. Securities and Exchange Commission**
  - *A Plain English Handbook*
  - <http://www.sec.gov/news/extra/handbook.htm>
- **Social Science Research Network (SSRN)**
  - *Legal Writing eJournal*
  - [http://papers.ssrn.com/sol3/JELJOUR\\_Results.cfm?form\\_name=journ\\_albrowse&journal\\_id=902240](http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journ_albrowse&journal_id=902240)

- **Lawyers spend half their time trying to understand what other lawyers wrote; and the other half of their days writing things that other lawyers spend half their time trying to understand.**

- Samuel A. Goldberg

## Wydick's view

- We lawyers do not write plain English.
- We use eight words to say what could be said in two. **(We are wordy.)**
- We use arcane phrases to express commonplace ideas. **(We are unclear and pompous.)**
- Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. **(We are dull.)**

## A practicing lawyer's view

- Lawyers in practice are generally judged by the final product they produce: the written, negotiated text. Clearly, in my firm, **the first thing new lawyers will be judged upon is their writing**. The fastest way to get ahead as a new lawyer is to be an able writer. The fastest way to fail is to be a poor writer.
- Bryn Vaaler, *Compositional Practice: A Comment on "A Liberal Education in Law,"* 1 J.ALWD 148, 149 (2002) (emphasis added)

# Ruth Bader Ginsburg

Associate Justice U.S. Supreme Court





- Lawyers serve their clients best when their readers can quickly and firmly grasp their points. Readers of legal writing, on and off the bench, often work under the pressure of a relentless clock. They may lack the time to ferret out bright ideas buried in complex sentences, overlong paragraphs, or too many pages. Strong arguments can escape attention when embedded in dense or Delphic prose. Lucid, well-ordered writing can contribute immeasurably to a lawyer's success as an advocate and counselor.

- Ruth Bader Ginsburg, Associate Justice, United States Supreme Court

# Ferret - “To ferret out . . .”

\* verb-based writing



Cross section of a prairie dog house. (Drawing by Mark E. Mowbray, courtesy University of Nebraska-Lincoln, Department of Forestry, Fisheries, and Wildlife)

# Justice Ginsberg is saying

- Legal writing should be:
  - **Clear;**
  - **Concise;**
  - **Simple;** and
  - **Well-ordered.**
- **“I see but one rule: to be clear. If I am not clear, all my world crumbles to nothing.”**
  - Paula LaRocque, *The Book on Writing: The Ultimate Guide to Writing Well* 12 (2003) (quoting Stendhal writing to Balzac).

## William Zinsser says

- **Remember that what you write is often the only chance you'll get to present yourself to someone whose business or money or goodwill you need. If what you write is ornate, or pompous, or fuzzy, that's how you'll be perceived. The reader has no other choice.**

- William Zinsser, *On Writing Well* 174 (7<sup>th</sup> ed. 2006)

## *Plain English for Lawyers*

- The premise of this book is that good legal writing should not differ, without good reason, from ordinary well-written English.
  - Richard C. Wydick, *Plain English for Lawyers* 4 (5<sup>th</sup> ed. 2005)

## *Plain English for Lawyers*

- Chapter 1 – Why Plain English?
- Chapter 2 – Omit surplus words
- Chapter 3 – Use base verbs, not nominalizations
- Chapter 4 – Prefer the active voice
- Chapter 5 – Use short sentences
- Chapter 6 – Arrange your words with care
- Chapter 7 – Choose your words with care
- Chapter 8 – Avoid language quirks
- Chapter 9 – Punctuate carefully

# BE CONCISE

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## Write concisely

- **Write only what needs to be said.**
- **Eliminate the unnecessary.**
- **Cut clutter of all kinds.**
- **Make every word count.**



## Revise for brevity and clarity

- **First, eliminate.**

- Ask each word: *What are you doing for me?*

- **Second, boil down.**

- Seek clarity in economy.
  - Eliminating excess words gives your writing clarity of focus.
  - Irving Younger, *Skimming the Fat Off Your Writing*, Mich. Bar J., May 2003 at 32.

## Example

- **The landlord made a decision to delay replacement of the heating units.** 12 words
  - **The landlord decided to delay replacement of the heating units.** 10 words
  - **The landlord delayed replacing the heating units.** 7 words
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 114-15 (3<sup>rd</sup> ed. 2009).

## Example

- **Smith's case is an illustration of this point.** 8 words
  - **Smith's case is illustrative of this point.** 7 words
  - **Smith's case illustrates this point.** 5 words
- 
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 115 (3<sup>rd</sup> ed. 2009).

## Revise this sentence

- **At this point in time, we are in the process of filing a motion for summary judgment with the court.**
- 20 words
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 121 (3<sup>rd</sup> ed. 2009).

## Revisions

- *Original:* **At this point in time, we are in the process of filing a motion for summary judgment with the court.** 20 words
- **We are now in the process of filing a motion for summary judgment.** 13 words
- **We are in the process of filing a motion for summary judgment.** 12 words
- **We are filing a motion for summary judgment.** 8 words
- **We are moving for summary judgment.** 6 words

# EXERCISES

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Paula LaRocque, *The Book on Writing: The Ultimate Guide to Writing Well* (2003)

## Sentence 1

- **They are of the opinion that the agency needs to make changes in its proposal.**

## Sentence 1 revised

- **They think the agency should change its proposal.**
- *Original:* **They are of the opinion that the agency needs to make changes in its proposal.**



## Sentence 2

- **Prior to moving to Chicago, he lived in the city of Philadelphia.**

## Sentence 2 revised

- **He lived in Philadelphia before moving to Chicago.**
- *Original:* **Prior to moving to Chicago, he lived in the city of Philadelphia.**

## Sentence 3

- **She enrolled in this class in view of the fact that philosophy is a subject in which she takes an interest.**

## Sentence 3 revised

- **She took this class because philosophy interests her.**
- *Original:* **She enrolled in this class in view of the fact that philosophy is a subject in which she takes an interest.**

## Sentence 4

- **The fact that you didn't seek our advice subsequent to the meeting makes us feel disappointment.**

## Sentence 4 revised

- **We're disappointed that you didn't seek our advice after the meeting.**
- *Original:* The fact that you didn't seek our advice subsequent to the meeting makes us feel disappointment.

## Sentence 5

- **There were three or four people on the committee who said that the companies who were bidding needed to give a demonstration of how the new equipment functions.**

## Sentence 5 revised

- **Several committee members said the bidding companies should demonstrate the new equipment.**
- *Original:* There were three or four people on the committee who said that the companies who were bidding needed to give a demonstration of how the new equipment functions.



## Sentence 6

- **Some residents of the suburb of Oakwood have a tendency to consider the neighborhood a bedroom community.**

## Sentence 6 revised

- **Some Oakwood residents consider it a bedroom community.**
- *Original:* **Some residents of the suburb of Oakwood have a tendency to consider the neighborhood a bedroom community.**

## Sentence 7

- **There were 108 accidents in the targeted area during the crackdown, down from 145 during the same period last year.**

## Sentence 7 revised

- **During the crackdown, the number of accidents in the targeted area fell to 108, down from 145 last year.**
- *Original:* There were 108 accidents in the targeted area during the crackdown, down from 145 during the same period last year.

## Sentence 8

- **Military officers need to have knowledge and an understanding of their troops.**

## Sentence 8 revised

- **Military officers should know and understand their troops.**
- *Original:* **Military officers need to have knowledge and an understanding of their troops.**

## Sentence 9

- **As per our telephone conversation, enclosed please find information on a new blocking device that prevents computer hackers from gaining access to your computer equipment and records.**

## Sentence 9 revised

- **Here's information on a blocking device that can keep hackers out of your computer system.**
- *Original:* **As per our telephone conversation, enclosed please find information on a new blocking device that prevents computer hackers from gaining access to your computer equipment and records.**



## Sentence 10

- **The true facts of the matter are that the university has set a new record this year in receipt of free gifts and cash donations.**

## Sentence 10 revised

- **The university has received record gift and cash donations this year.**
- *Original:* **The true facts of the matter are that the university has set a new record this year in receipt of free gifts and cash donations.**

## Summary – Avoid redundancies

Redundant	Concise
<b>true facts</b>	<b>facts</b>
<b>free gift</b>	<b>gift</b>
<b>final completion</b>	<b>completion</b>
<b>exactly the same</b>	<b>the same</b>

## Summary – Avoid “filler” phrases

Wordy	Concise
<b>Because of the fact that</b>	<b>Because</b>
<b>In many cases</b>	<b>Often</b>
<b>The fact he had not succeeded</b>	<b>His failure</b>
<b>At this point in time</b>	<b>Now</b>
<b>Concerning the matter of</b>	<b>About</b>

## Summary – Avoid expletive constructions

### Wordy

- **It is expensive to upgrade software.**
- **There are four reasons supporting this conclusion.**

### Concise

- **Upgrading software is expensive.**
- **Four reasons support this conclusion.**

## Summary – Use one-word modifiers and possessives

### Wordy

- The dog that had rabies
- The order of the court
- The man who was tired
- The argument of the petitioner

### Concise

- The rabid dog
- The court's order
- The tired man
- The petitioner's argument

## In future classes, more ways to be concise . . .

### Favor the active voice

**The objection was  
overruled by the judge.**

**The judge overruled the  
objection.**

### Avoid nominalizations

**The judge will give  
careful consideration to  
the objection**

**The judge will carefully  
consider the objection.**

**The End**

