

# Less Is More

A Zen Guide to Good (Legal) Writing

BY JARED WEST AND MARIA ZALESKY



**A**specter haunts the legal profession—the specter of poor legal writing. How many times have you read a passage like, “At a point in time immediately subsequent to the termination of the aforesaid altercation on the above described premises, the defendant-appellant removed himself from the aforementioned locus and repaired to a situs on the premises immediately adjacent thereto”? After finishing your martini and staring at a wall, has it occurred to you that sentence could read, “After the fight, defendant went next door”?<sup>1</sup>

Writing clearly and concisely is challenging. A well-known quote reads, “I would have

written a shorter letter, but I didn’t have enough time.”<sup>2</sup> We as lawyers should strive to improve our writing primarily to uphold our duties to the court and our clients, as some lawyers have learned. For example, one court noted, “counsel’s brief is poorly written, replete with improper spelling and bad formatting. By submitting a poorly written brief, the attorney fails the Court as well as the client.”<sup>3</sup>

Further, it was impressed upon one of the authors that “nobody wants to read your [stuff], nobody has time to read your [stuff], so make your [stuff] as easy to read as possible.”<sup>4</sup>

Indeed, the “reader is someone with an attention span of about 30 seconds—a person

assailed by many forces competing for attention.”<sup>5</sup> Tom Waits once said, “the world is a hellish place, and bad writing is destroying the quality of our suffering.”<sup>6</sup>

So, what can we lawyers do to write better so that our clients, opposing counsel (maybe), and most important, our judges don’t have to suffer from dense writing littered with bygone words? These four concepts offer a starting point:

One, you can do more by saying less. A 10-word sentence is almost always preferable in five words. Not only will this save you space, but your fewer words will have a greater impact on your audience. And just like in music, where

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the space between notes gives notes their very meaning, space in writing is vital. Like a perfectly paced horror movie, the negative space is much scarier than seeing the monster. Most judges will likely prefer the elegant spacing of Vivaldi's "The Four Seasons" over unrelenting and cacophonous death metal.

Two, good legal writing is good writing. The tools that journalists and fiction writers employ are equally applicable to our profession. We shouldn't mindlessly employ obtuse legalese out of blind reverence for tradition or some misplaced notion that our licenses demand it.

Three, clear writing starts with clear thinking. A cluttered mind allowed to frolic and meander aimlessly begets cluttered, chaotic writing. The writing process is predictable. If you learn to channel the necessary spirits at each stage, your writing will improve.

Four, routinely applied universal principles of good writing that harness the first three concepts will dramatically improve your writing. This article offers 12 core tenets:

1. Think before you write.
2. Outline before you draft.
3. Keep paragraphs short.
4. Use informative headers.
5. Don't sweat fake rules.
6. Omit needless words.
7. Favor the simple.
8. Use active voice.
9. Avoid nominalizations.
10. Get to the subject quickly.
11. Use short sentences.
12. Revise, revise, revise.

These perennial insights come from many sources, but our discussion primarily references four acclaimed works: *The Elements of Style*, Fourth Edition, William Strunk and E.B. White (Strunk); *Style: Lessons in Clarity and Grace*, 12th Edition, Joseph Williams and Joseph Bizup (Williams); *On Writing Well*, Sixth Edition—Revised and Updated, William Zinsser (Zinsser); and *Legal Writing in Plain English*, Second Edition, Bryan A. Garner (Garner).

Another core concept is the madman-architect-carpenter-judge paradigm developed by Betty Flowers and popularized by Bryan Garner. These four archetypes serve as heuristics or mindsets for the writing process.<sup>7</sup>

Garner says, "Good writing is a combination of linear and nonlinear thinking—you need creativity to craft interesting arguments."<sup>8</sup> The madman is the spontaneous and creative archetype whom we channel for our main ideas and the building blocks of our writing.

The remaining archetypes embody the process of creating the blueprint for our writing (the architect), joining the blocks into a recognizable structure (the carpenter), and ultimately refining the structure into a visually appealing, maximally persuasive creation (the judge).

Each archetype must have time to complete their role in the writing process. Too much of any leads to unbalanced writing. Whether that writing errs on the side of stream of consciousness with minimal structure and maximum emotion, or stilted prose with technically correct but soulless arguments, depends on your natural tendencies as a writer. An enormous part of good writing, for Garner, depends on the checks and balances the archetypes develop.

### Think Before You Write

In *7 Habits of Highly Effective People*, Stephen Covey recommends beginning with the end in mind.<sup>9</sup>

"Begin With the End in Mind is based on imagination—the ability to envision in your mind what you cannot at present see with your eyes. It is based on the principle that all things are created twice. There is a mental (first) creation, and a physical (second) creation."<sup>10</sup>

Strunk says, "planning must be a deliberate prelude to writing. The first principle of composition, therefore, is to foresee or determine the shape of what is to come and pursue that shape."<sup>11</sup>

"Clear thinking," Zinsser says, "becomes clear writing; one can't exist without the other."<sup>12</sup>

Start with your vision and visualize the result. "Ready, fire, aim" (the idea that prompt action is more advantageous than overanalyzing potential actions—or "analysis paralysis") may be a successful mentality for leadership positions or the courtroom. Professional writing, in contrast, should be a routine, disciplined process. And it must start with your goal in mind, for you cannot hit a target you cannot see.

### Outline Before You Draft

Once you have envisioned your result, you must put your ideas into words. You must do so initially *without* regard to style, structure, or syntax. For example, Williams says, "concentrate first on getting your ideas into words."<sup>13</sup> To facilitate this creative stage of the writing process, Garner employs the first of the four archetypes: the madman.

The madman acts first. The madman is the patron of brainstorming. He is your creative spirit. Let him get your words out in a stream of consciousness fashion. Don't worry about form or structure. The architect will bring order to the madness.<sup>14</sup>

It's important to let the madman finish.<sup>15</sup> "Once the madman comes up with the ideas," Garner says, "the architect must arrange them."<sup>16</sup> In other words, the architect takes the nonlinear building blocks developed by the madman and arranges them in logical, linear order.

Next, the third archetype, the carpenter, begins to build the draft per the architect's direction, by working in complete sentences and full propositions joining "sentences to sentences and paragraphs to paragraphs."<sup>17</sup> The carpenter's job is to create a working draft based on the two outlines (linear and nonlinear) you create when channeling the madman and the architect, respectively.

If you write often enough, the carpenter will naturally begin incorporating these principles. But the carpenter's sole job is to build the first readable draft per the architect's blueprint—not to implement and enforce every principle. That is the judge's domain.

### Keep Paragraphs Short

One of the easiest writing tips for the carpenter to apply is to keep paragraphs short.<sup>18</sup> Why? As Winston Churchill famously said, "This paper, by its very length, defends itself from ever being read." Nothing is more unwelcoming than a brief that looks like a college exam cheat sheet, covered from edge to edge with text. Other than simply writing less (which the other principles will address), one of the easiest structural changes you can make is to break up long, intimidating paragraphs.

Per Garner, the mere sight of double-spaced paragraph blocks is enough to put off modern readers.

Zinsser concurs: “Writing is visual—it catches the eye before it has a chance to catch the brain. The white space around the text is what makes a page look inviting and roomy. The lack of it makes the page look imposing and cramped.”<sup>19</sup>

The important note here is that a short, broken-up paragraph is better “even if it is not necessary . . . for sense, meaning, or logical development, [since it] is often a visual help.”<sup>20</sup>

“Short paragraphs put air around what you write and make it look inviting, whereas a long chunk of type can discourage a reader from even starting to read.”<sup>21</sup>

### Use Informative Headers

Another easy way to create space in your writing is using informative headers. Speed readers and judges often skim a paper before they read it (if they read it at all). Informative headers both create space and highlight main points.

Garner gives the following six reasons to use informative headers: (1) they categorize your thoughts; (2) they give readers bearings; (3) they provide visual variety; (4) they make the text easy to skim; (5) they signal transitions; and (6) especially if used in a table of contents, they give the reader a roadmap.<sup>22</sup> Headers should be informative and state the topic in complete sentences.<sup>23</sup>

### Don't Sweat Fake Rules

This may be the most divisive principle in this article. However, Williams provides an excellent breakdown of three different types of rules of writing: (1) real rules, (2) social rules, and (3) invented rules.<sup>24</sup>

There are real rules of grammar that English speakers must adhere to, such as adjectives preceding nouns. We would not say, “the book black,” as one may in Spanish. That is wrong. Speakers must adhere to real rules to encode things in ways listeners understand.

Social rules concern formality, such as not using “ain’t.” Professional writing by nature requires adherence to a certain level of formality. We recommend you continue to mind social

rules in your jurisdiction and, when in doubt, err on the side of formality.

Invented rules are those like (1) you should not start a sentence with “and” or “but,” (2) you should not end a sentence with a preposition, and (3) you should not split infinitives.<sup>25</sup> Williams explains that many fake rules were devised by ivory tower grammarians to distinguish themselves from other social classes.<sup>26</sup>

Not only do we understand someone when they violate these alleged rules, but revered authors routinely violate these so-called rules.<sup>27</sup> Similarly, we routinely violate these rules in our everyday speech.<sup>28</sup> If that’s the case, then are these rules even rules? As Churchill purportedly said, “This is the sort of English up with which I will not put.”<sup>29</sup>

Williams brings this point home by saying that we teach kids to not start sentences with “and” or “but” because otherwise they will start

every sentence with “and” or “but.” This is more an elementary school heuristic than a proper rule of grammar. Starting too many sentences with “and” or “but” is not an error of grammar but an error of style.<sup>30</sup> Of course, we may occasionally want to adhere to such alleged rules depending on our audience. However, intermittent use of “and” to start a sentence is not improper and should not compromise your clarity. The most important thing is to make your writing clear and concise.<sup>31</sup>

A related concept is tactfully bending the rules to make your writing more interesting. For example, John Grisham in *The Firm* violates two common rules almost back-to-back. He uses sentence fragments: “There was no joy in seeing the names. He almost felt sorry for Nathan Locke. Almost. Wally Hudson, Kendall Mahan, Jack Aldrich and, finally, Lamar Quin. He could see their faces.”<sup>32</sup> He also uses the serial “and” in

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a list: “As dusk approached, the army of goons and thugs and gunmen, and lawyers, slipped into the darkness and waited.”<sup>33</sup> As one legal writing enthusiast recently said, “Judges are a captive audience. But they’re also human. There are limits to their time and energy.”<sup>34</sup> Our efforts to make our speech captivating and entertaining while being informative and persuasive should not be limited to our verbal advocacy like opening statements and closing arguments.

### Omit Needless Words

Especially in the later stages of drafting, we always want to ask, “What am I trying to say?” and, “am I saying it?” As lawyers, we often default to the dense prose of our forebearers, such as, “at the present time, we are experiencing precipitation,”<sup>35</sup> instead of, “it’s raining.”<sup>36</sup>

“[Omitting needless words] requires not that the writer make all his sentences short,” Williams tells us, “or that he avoid all detail and treat his subjects only in outline, but that every word tell.” That is because “[w]riting improves in direct ratio to the number of things we can keep out of it that shouldn’t be there.”<sup>37</sup>

How do we omit needless words? Cull redundancies. For instance, “Mr. Smith remitted a payment to Ms. Smith in the amount of \$500” can simply be, “Mr. Smith paid Ms. Smith \$500.” We don’t need to say “machine” after “ATM” or “hot” before “water heater.”

Avoid meta-discourse, or talking about what you are going to talk about. We use meta-discourse when introducing a topic or attributing our sources.<sup>38</sup> For instance, “This section introduces another problem, that of noise pollution. The first thing to say about it is that noise pollution exists not only . . .” can simply be, “another problem is noise pollution. First, it exists not only . . .”<sup>39</sup>

“Clutter is the disease of American writing . . . Our national tendency is to inflate and thereby sound important. . . . But the secret of good writing is to strip every sentence to its cleanest components.”<sup>40</sup> However, “[f]ighting clutter is like fighting weeds—the writer is always slightly behind.”<sup>41</sup>

In the law, we must provide legal support for our arguments. But not every legal rule in a motion or brief needs to be introduced by

the ruling court, especially at the trial level. Consider this example: “‘The Division IV of the Colorado Court of Appeals found that a trial court does not err if it considers an ‘unpublished decision for whatever persuasive value it may have had.’ *Patterson v. James*, 2018 COA 173, ¶ 40.” Here, “The Division IV of the Colorado Court of Appeals” is redundant given the subsequent citation. It is more concise and powerful to simply provide the rule. Trust us, judges know how to read citations.

Another tip to use the possessive “’s” to avoid unnecessary “of” phrases. “The first argument of the response” can simply be “The response’s first argument.”<sup>42</sup>

### Favor the Simple

“Avoid fancy words. Avoid the elaborate, the pretentious, the coy, and the cute. Do not be tempted by a twenty-dollar word when a ten-center is handy, ready and able.”<sup>43</sup>

Although sometimes intentionally employing dense prose may be a good strategic move or may impress a client, in most circumstances, we should write as plainly as possible. This is especially true because intentionally using opaque language likely raises red flags with those giving it a cursory read.<sup>44</sup>

Regarding simple word choices, our profession is riddled with opportunities. “Pursuant to” can be “per.” “Numerous” can be “many.” And “in order to” can simply be “to.”

- in the event of = if
- in order to = to
- at this time = currently
- in regards to/with respect to = regarding
- assistance = help
- remainder = rest
- sufficient = enough
- attempt = try

In his book, *Atomic Habits*, James Clear discusses the “aggregation of marginal gains”—the idea that many little changes can add up to a big change.<sup>45</sup> Simple substitutions such as trading “in the instant matter” to “here” can add up to multiple lines of additional argument in a motion or reply where space may be valuable.

We can easily apply this same philosophy to sentence structure, syntax, and word choice.

“Rich, ornate prose is hard to digest, generally unwholesome, and sometimes nauseating.”<sup>46</sup>

### Use Active Voice

All attorneys know this yet struggle to apply it. As Bruce Lee said, “Knowing is not enough, we must apply.”<sup>47</sup>

Active voice makes for stronger sentences with fewer words. “Thus, brevity,” Strunk says, “is a by-product of vigor.” Compare these two examples from Williams:

- ▶ Once upon a time, as a walk through the woods was taking place on the part of Little Red Riding Hood, the Wolf’s jump out from behind the tree occurred, causing her fright.
- ▶ Once upon a time, Little Red Riding Hood was walking through the woods, when the Wolf jumped out from behind a tree and frightened her.<sup>48</sup>

Despite knowing this, many attorneys still employ sentences like, “Calls were made by the plaintiff on August 19.” If the plaintiff called on August 19, why not say so?

To be sure, there are times to use passive voice. For example, if you are trying to deescalate a situation by avoiding blame (“Melanie Kalmanson made a typo on Bluebook Wednesday” versus “A typo was made on Bluebook Wednesday”), focusing on the recipient of the action (“The President nominated Lindsey Lawton for a vacancy on the Court” versus “Lindsey Lawton was nominated for a vacancy on the Court”) or to direct the reader’s attention (“Chris Schandavel sold Brief-Writing Ninja for one million dollars” versus “Brief-Writing Ninja was sold for one million dollars.”).<sup>49</sup>

Most of the time, however, active voice is better. Even if the caller is unknown, active voice is clearer (and more concise). For example, “calls were made on August 19 that caused the defendant to fear for his life,” versus, “on August 19, an anonymous caller threatened the defendant.”

Active voice is powerful because we are natural story tellers and listeners. We understand sentences better when the actors are doing the acting. This is true even if the sentence’s subject is an abstract concept—as it often is in legal writing.

- ▶ The Federalists' argument in regard to the destabilization of government by popular democracy was based on their belief in the tendency of factions to further their self-interest at the expense of the common good.
- ▶ The Federalists argued that popular democracy destabilized government, because they believed that factions tended to further their self-interest at the expense of the common good.<sup>50</sup>

### Avoid Nominalizations

By far, one of the most profound insights in reducing clutter is learning to avoid nominalizations. A nominalization is the noun-form of a verb. When we use the noun-form of a verb, this invariably makes our sentence construction denser. Compare the following sentences:

- ▶ "Our request is that you do a review of the data."
- ▶ "We request that you review the data."
- ▶ "The intention of the committee is to conduct an audit of the records."
- ▶ "The committee intends to audit the records."
- ▶ "Our loss of sales was a result of their expansion of outlets."
- ▶ "We lost sales because they expanded outlets."<sup>51</sup>

Just like when using active voice, "when you match characters to subjects and actions to verbs in most of your sentences, readers are likely to think your prose is clear, direct, and readable."<sup>52</sup>

### Get to the Subject Quickly

In drafting sentences, you want to get to your subject as quickly as possible. This typically means avoiding long introductions and long, abstract subjects. This also means not interrupting the subject-verb connection or the verb-object connection.

Consider this example: "Since the city did not approve the permits and because the subcontractor canceled, the construction will be delayed." The clause "the construction will be delayed" is the subject, yet we took 13 words to get to it. The sentence reads better when the

subject is first. "The construction will be delayed because the city did not approve the permits and the subcontractor canceled."

Your introduction section in a motion or brief, too, should concisely state what the point is from the start.<sup>53</sup>

### Use Short Sentences

You should break long sentences into smaller sentences. Most sentences should be about 15 words. This, however, does not mean that every sentence should be the same length. Rather, you should vary sentence length for readability. Don't be afraid to break up long, clunky sentences.

- ▶ The court in *Chester v. Morris*, a case involving a similar traffic accident, held that a person riding a bicycle must adhere to the same standards as a person driving a car, although it limited its holding to the facts of that case, which included the fact that the bicyclist was intoxicated.
- ▶ *Chester v. Morris* involved a similar traffic accident. The court held that a bicyclist must adhere to the same standards as a person driving a car. The opinion is limited to situations in which the bicyclist is intoxicated.<sup>54</sup>

### Revise, Revise, Revise

All the authors say this: You are never going to nail it on the first try.<sup>55</sup> Rather, the difference between good writing and great writing lies in the final stage. Every writer should review their writing and ensure that principles such as these are applied appropriately.


"Quite often you will discover, on examining the completed work, that there are serious flaws in the arrangement of the material, calling for transpositions. . . . Remember, it is no sign of weakness or defeat that your manuscript ends up in need of major surgery."<sup>56</sup> Rewriting is where the magic happens.<sup>57</sup>

"Look for clutter in your writing and prune it ruthlessly. Be grateful for everything you can throw away. Reexamine each sentence you put on paper. Is every word doing new work? Can any thought be expressed with more economy? . . . Simplify, simplify."<sup>58</sup> "Writing improves in direct ratio to the number of things we can keep out of it that shouldn't be there."<sup>59</sup>

### Conclusion

To float like a butterfly and sting like a bee, your brief must evince style, grace, and efficiency. Like an unaccompanied cello suite, it must have space and precision. A ballerina makes her dance look effortless only after decades of consistent bone-breaking effort. The writing process, too, is consuming, thankless, and



potentially never-ending. Allow yourself the time and space to practice the process routinely and systematically. Allow the archetypes, each with their respective prerogatives, to do their work. With consistent effort and adherence to these principles, anyone can be a more effective writer. So, embrace the process, hone your craft, and let your words shine. 



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## NOTES

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7. Flowers, "Madman, Architect, Carpenter, Judge: Roles and the Writing Process," *Proceedings of the Conference of College Teachers of English* 7-10 (1979).
8. Garner, *supra* note 5 at 10.
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13. Williams and Bizup, *Lessons in Clarity and Grace* 7 (12th ed. Pearson 2016).
14. Garner, *supra* note 5 at 10.
15. *Id.*
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17. *Id.*
18. Strunk and White, *supra* note 11 at 16 ("Writing should be broken up by using short paragraphs."); Garner, *supra* note 5 at 90.
19. Zinsser, *supra* note 12 at 9.
20. Garner, *supra* note 5 at 81.
21. Zinsser, *supra* note 12 at 80.
22. Garner, *supra* note 5 at 92.
23. *Id.* at 20.
24. Williams and Bizup, *supra* note 13 at 10-12.
25. *Id.* at 10 ("Some rules are real—if we ignore them, we risk being labeled at least unschooled: verbs agree with their subjects. There are numerous others. But many often-repeated rules are less important than many think, and some are not even real."). See also <https://courses.lumenlearning.com/suny-fmcc-engcomp1/chapter/correctness-in-writing>.
26. *Id.* at 12 ("[S]ome grammarians have invented a handful of rules that they think we all should observe. . . . [They] have accused the best writers of violating rules like these, and the best writers have constantly ignored them . . . . The fact is, none of these invented rules reflects the unself-conscious usage of our best writers."); *Id.* at 14 ("Since our language seems to reflect our quality of mind, it is easy for those inclined to look down on others to think that grammatical "errors" indicate mental or moral deficiency.").
27. *Id.* at 16 ("If writers whom we judge to be competent regularly violate some alleged rule and most careful readers never notice, then the rule has no force. In those cases, it is not writers who should change their usage, but grammarians who should change rules.").
28. Zinsser, *supra* note 12 at 35 ("Who am I writing for? The question that begins this chapter has irked some readers. They want me to say 'Whom am I writing for' But I can't bring myself to say it. It's just not me.").
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30. Williams and Bizup, *supra* note 13 at 12.
31. *Id.* at 26 ("We must write correctly, but if in defining correctness we ignore the difference between fact and folklore, we risk overlooking what is really important—the choices that make our writing dense and wordy or clear and concise.").
32. Grisham, *The Firm*, Chapter 43 (Knopf Doubleday 2010).
33. *Id.* at Chapter 39.
34. <https://www.linkedin.com/feed/update/urn:li:activity:7193211845661405184>.
35. Zinsser, *supra* note 12 at 14.
36. *Id.*
37. *Id.*
38. Williams and Bizup, *supra* note 13 at 123-27.
39. *Id.*
40. Zinsser, *supra* note 12 at 7.
41. *Id.* at 9.
42. Garner, *supra* note 5 at 51.
43. Strunk and White, *supra* note 11 at 76.
44. Zinsser, *supra* note 12 at 16 ("Clutter is the official language used by corporations to hide their mistakes. . . . When an Air Force missile crashed, it 'impacted with the ground prematurely.'").
45. <https://jamesclear.com/marginal-gains>.
46. Strunk and White, *supra* note 11 at 72.
47. The original quote is widely attributed to Johann Wolfgang von Goethe. See <https://iep.utm.edu/goethe>.
48. Williams and Bizup, *supra* note 13 at 29 ("Most readers think [the second sentence] tells the story more clearly than [the first] because it follows two principles: The main characters are subjects of verbs. Those verbs express specific actions.").
49. Hagen, "Don't Use Passive Voice! Unless . . .," LinkedIn (May 16, 2024), <https://bit.ly/4djliR8>.
50. Williams and Bizup, *supra* note 13 at 31 ("Readers think [the second sentence] is clearer for two reasons: most of the characters (italicized) are subjects (underlined), and the actions (bolded) are verbs (capitalized) [:] The *Federalists* argued that *popular democracy* destabilized government, because they believed that *actions* tended to further *their* self-interest at the expense of the common good.>").
51. *Id.* at 31.
52. *Id.*
53. Strunk and White, *supra* note 11 at 16 ("As a rule, begin each paragraph either with a sentence that suggests the topic or with a sentence that helps the transition.").
54. <https://law.indiana.edu/instruction/tanford/web/reference/how2writegood.pdf>.
55. Zinsser, *supra* note 12 at 84. ("Rewriting is the essence of writing well: it's where the game is won or lost. That idea is hard to accept. We all have an emotional equity in our first draft: we can't believe that it wasn't born perfect. But the odds are close to 100 percent that it wasn't.").
56. Strunk and White, *supra* note 11 at 72.
57. Zinsser, *supra* note 12 at 4 ("[R]ewriting is the essence of writing."); Strunk and White, *supra* note 11 at 72 ("Revising is part of writing. Few writers are so expert that they can produce what they are after on the first try. Quite often you will discover, on examining the completed work, that there are serious flaws in the arrangement of the material, calling for transpositions. . . . Remember, it is no sign of weakness or defeat that your manuscript ends up in need of major surgery.").
58. Zinsser, *supra* note 12 at 17.
59. *Id.* at 13.