

By Professor Rick Bales

Active Writing

Verbs are where the action is. They are the key to holding your reader's attention. To strengthen your verbs, avoid the passive voice and excessive nominalizations.

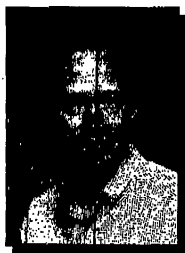
Passive Voice

In the passive voice, the subject of the sentence receives the action (*The plaintiff's car was struck by the defendant's car.*). In the active voice, the subject performs the action (*The defendant's car struck the plaintiff's car.*).

The passive voice has four shortcomings. First, it unnecessarily lengthens the sentence (nine versus seven words in the preceding sentence). Second, shifting the subject to the last part of the sentence makes the sentence difficult to read, particularly if the sentence contains several clauses. Third, it makes the sentence sound dull. Fourth, and often most importantly, the passive voice frequently masks the identity of the subject. One of the most famous uses of the passive voice occurs in one of Aesop's Fables, when a young mouse suggests that a bell "be hung" around a cat's neck. Similarly, countless legal sentences begin with: "It was held that . . ." The passive voice often begs important questions, such as who will hang the bell, or which court issued the decision.

For these reasons, the passive voice generally should be avoided. There are, however, times when the passive voice is appropriate. This is particularly true when the subject is unknown (*The driver was thrown from the car.*) or when the result of the action is the most important part of the sentence (*Grandma got [sic] run over by a reindeer.*).¹

You may have noticed that the first sentence of the preceding paragraph was written with the passive voice. (Compare: . . . *writers generally should avoid the passive voice.*). I often use the passive voice when I critique students' writing, because the passive voice softens and depersonalizes the criticism. I similarly used the passive



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voice in the first sentence of this paragraph (compare: *I wrote the first sentence of the preceding paragraph with the passive voice.*) because I wanted to avoid the first person. Usually, however, the active voice is the better choice, because it is clearer, more specific, and more vigorous.

Nominalizations

Nominalizations² are words in drag: they are verbs or adjectives that masquerade, ostentatiously though unconvincingly, as nouns. They dilute a sentence by hiding the "true" verb or adjective and, often, by adding unnecessary words.³ Writers often use nominalizations because nominalizations sound pretentious. Isn't the "utilization" of a nominalization more impressive than "using" it? But pretentious prose wins no motions if it causes the judge's eyes to glaze over.

Common nominalizations include determination (determine), investigation (investigate), preference (prefer), relevance/relevancy (relevant), applicability/applicable (apply), and "drew a distinction" (distinguished). Look for suffixes such as -tion, -ion, -ance/-ence, -ive, -ment, and -ability. Compare, for example: *Resolution of the dispute requires an extension of the injunction.* with *To resolve the dispute, extend the injunction.*

Conclusion

Verbs matter. They can make prose sound active and exciting, or they can make it sound dull and confusing. Avoiding the passive voice and excessive nominalizations could make the difference between engaging your reader and lulling her to sleep.

Professor Bales would like to extend special thanks to Reagan Burch, Jennifer Jolly-Ryan, and Judge Gregory Bartlett for their help on this project.

1. California Law Review, CLR Principles of Style 88 (2000).

2. Note that "nominalization" is itself a nominalization — it is the noun form of the adjective "nominal."

3. Terri LeClercq, Expert Legal Writing 52-53 (2000); University of Illinois Law Review Style Sheet at VI.5-6 (2000).

Density

Good legal writing is dense: it conveys lots of information in very few words. Judges don't have time to slough through a twenty-page discovery motion, and they shouldn't have to. Dense writing is likely to be read more carefully, and understood more thoroughly, than writing that is full of "fluff."

Here are some tips for improving your writing density:

(1) Edit repeatedly. Examine every sentence and ask yourself: "Is there a word or phrase that can be eliminated, or language that can be tightened?" If your answer is "no," chances are you're not looking hard enough (unless you are on your fifth or sixth draft).¹ Editing is time-consuming and hard work, but your reader will thank you for it.

(2) Omit "throat clearers": words or phrases that serve no useful function, or that can be condensed. Examples include:²

- said, herein, herewith, hereby, aforesaid
- as a matter of fact
- the fact that
- case is when
- to tell the truth
- the reason why is that (because)
- for the reason that (because)
- along the lines of (like)
- for the purpose of (for)
- in order to (to)
- in the event that (if)
- with the result that (so)
- until such time as (until)
- was aware (knew)
- the manner in which (how)
- the case at bar / the instant case (this case)

(3) Avoid telling the reader how she should feel about your subject (e.g., the issue is "of great importance").³ A friend, proofing a paper I wrote in law school, put it this way: a great sports writer will never say: "The game was exciting." Instead, the writer will write the article in a way that the reader feels the excitement. Similarly, avoid words like "clearly," "obviously," or "interestingly": use

your writing to *make* the proposition clear or obvious or interesting.

(4) Omit redundancies. Redundancies are the linguistic equivalent of the anvil that drops on the coyote after the steamroller already has flattened him. Examples include:

- mutual agreement
- totally destroyed
- whether or not
- single most
- null and void
- each and all
- fit and proper
- ordered, adjudged and decreed
- deem and consider
- to have and to hold
- last will and testament

(5) Avoid "to be" verbs as sentence openers.⁴ For example, *There are no facts in the record that support plaintiff's theory* could be re-written: *No facts in the record support plaintiff's theory.*

(6) Use the active, rather than the passive, voice. For example, *Bob was struck by Jim* could be re-written: *Jim struck Bob.*

(7) Avoid the phrase "in other words." Make it clear the first time.

(8) Omit unnecessary relative pronouns. For example, *Smith was the man that the witness identified* could be re-written: *The witness identified Smith.*

(9) Ask a colleague to edit your writing occasionally. Habits become entrenched; often it takes a fresh set of eyes to help us understand how we can improve our writing. Read the redlines carefully, and if possible, enter the changes yourself.

(10) Choose *one* of the tips described above and apply it to your next writing project. Good writing is like a yard: it is backbreaking to improve all at once, but relatively painless to improve a little at a time. Make it a lifelong project.



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1. Eugene Volokh, *Writing A Student Article*, 48 J. Legal Educ. 247, 258 (1998).

2. Terri LeClerc, *Guide to Legal Writing Style* 63 (2000).

3. Natalie Goldberg, *Writing Down the Bones* 68 (1986). The theatrical version of this rule is "show, don't tell."

4. University of Illinois Law Review Style Manual VII-5 (2000).

A Series

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Gender Neutral Language

Gender neutral language has become both accepted and expected.¹ As a result, gendered language sounds parochial and out-of-date. It also risks offending readers of both sexes. This is particularly true when the language is based on stereotypical assumptions about occupations, as when the language infers that all lawyers are men or that all teachers are women.

Gendered language usually comes in one of three forms. The first is the feminine suffix added to an occupation to distinguish female workers. Avoid these suffixes; use the gender-neutral root for both male and female employees. For example, use "actor" instead of "actress"; use "waiter" instead of "waitress."

A second form of gendered language is the use of gender-specific nouns. Many of these involve the generic use of "man," either alone or in a compound word. Examples, with suggested alternatives, include:

Gendered words	Substitutes
Man	Person, individual
Mankind	Persons, people, humankind, human beings
Mailman	Mail carrier
Policeman	Police officer
Steward /-ess	Flight attendant
Manpower	Personnel, human resources
Chairman	Chair
Wife, husband	Spouse
Draftsman	Drafter, writer

The third form of gendered language is the gendered pronoun. It sometimes can be challenging to neutralize the pronoun without making the writing sound stilted. Try the following:²

a. Recast the language in the plural. For example, *The attorney should promptly return his*

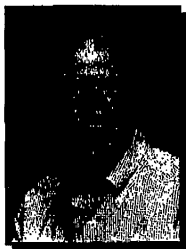
clients' telephone calls could be recast as *Attorneys should promptly return their clients' telephone calls*. However, the writer should be careful to avoid using "they" with a singular antecedent, as in *The attorney should promptly return their clients' telephone calls*.

b. Use "he or she" or "she or he." For example, the above sentence could be recast in the singular as *The attorney should promptly return his or her clients' telephone calls*. However, if "he or she" is used repeatedly in a paragraph, the language often sounds stilted and is distracting to the reader. That being said, the writer should avoid alternatives such as s/he and him/her. They are awkward in spoken language, and do not readily yield parallel possessive and objective cases.

c. Shift the pronoun to the first person (I or we) or second person (you). The above example could be recast in the first person as *As an attorney, I return my clients' telephone calls promptly*. It also could be recast in the plural as *As attorneys, we should promptly return our clients' telephone calls*. However, writing in the first or second person is too familiar for much legal writing. It would be inappropriate in a brief, for example, to address the judge as "you," so writers should use the third person.

d. Eliminate the personal pronoun. For example, *An attorney will obtain more referrals if he promptly returns his clients' telephone calls* can be rewritten as *An attorney who promptly returns client telephone calls will obtain more referrals*.

e. Alternate feminine and masculine pronouns. This approach works best if the pronoun switch is concurrent with a switch in subject, topic, or section. Switching pronouns within the same sentence or paragraph can confuse the reader.



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f. Substitute a noun for the pronoun. For example, *The attorney should return the client's telephone calls so he is not left wondering about the status of his case* could be recast as *The attorney should return the client's telephone calls so the client is not left wondering about the status of the case*. Substituting a noun for the pronoun has the added advantage of avoiding ambiguity regarding the object of the pronoun. Sometimes, however, overuse of the same noun sounds repetitive (*The attorney should return the attorney's phone calls promptly*).

g. Use a definite or indefinite pronoun instead of a personal pronoun. For example, *The client should assemble his records when preparing for his document production* could be recast as *The client should assemble all records when preparing for a document production*.

ENDNOTES

1. See generally Francine Wattman Frank & Paula A. Treichler, *Language, Gender, and Professional Writing: Theoretical Approaches and Guidelines for Nonsexist Usage*, 123-24, 141-278 (1989); University of Illinois Law Review Style Sheet VI at 2-4 (2000).
2. In addition to the sources cited above, see also Terri LeClercq, *Expert Legal Writing*, 127-34, (2000); Debora Schweikart, *The Gender-Neutral Pronoun Redefined*, 20 Women's Rights Law Reporter 1 (1998).

Your Law Practice

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services provided to firm clients and protects the health of the firm); or

- ✓ the "Grinder" (one who generates quality work product often behind closed doors).

Each of these attorney types has a valuable role in the firm and should be afforded a direct or indirect participation in the implementation of the firm marketing plan.

Any effective marketing plan must specifically insure that attorneys stay in constant personal communication with clients whether by e-mail, telephone calls or personal visits. Communication is, however, a give and take process and should be designed to elicit a response that allows the firm to determine and address client needs and expectations.

Similarly, any plan today should include "partnering" as an element. While the term "partnering" has many connotations; at a minimum, the plan should encourage the attorney's immersion into the client's business in order to fully understand that busi-

ness. The goals of partnering are to provide appropriate counsel as another member of the client management team, to develop new capabilities associated with that particular client's needs, and to insure a more efficient delivery of services. The firm must consider ways to share specific responsibilities for tasks performed with the client or its in-house counsel, including innovative pricing strategies to encourage efficiencies in the performance of legal services.

In summary, any well conceived marketing plan must anticipate change, must focus on strategic objectives that truly create bottom line results, and must encourage the participation of all attorneys in its development and implementation with some degree of accountability. ■

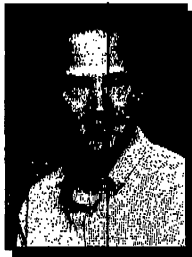
Telling A Story

Last Spring, Ryan Allison,¹ a student in my Civil Procedure II class, came into my office to discuss the research paper he was working on for class. Mr. Allison has a background in creative fiction writing, and it had shown in his class presentation earlier that day. His topic was the enforcement of injunctions against nonparties (such as agents and trespassers). For his presentation he had constructed an elaborate hypothetical, the facts of which he varied to illustrate the application of the legal doctrine to each type of nonparty. His often comical variations held the other students spellbound, and I am certain they learned more from his presentation than they did from many of my lectures.

In contrast to his presentation, however, Mr. Allison's paper was a cure for insomnia. He had omitted the hypothetical, leaving the paper analytical, didactic, and dull. Mr. Allison explained to me that he previously had been told that storytelling was incompatible with legal writing; that if he wanted to "write like a lawyer," he would have to "unlearn" the creative writing skills he had learned in college.

I disagree. Any seasoned trial lawyer knows that the way to win a jury trial is to tell a sympathetic story about the client. What many attorneys don't realize, however, is that a good story is equally effective at persuading judges and clients, and in contexts other than trial. This is why Aesop's Fables, New Testament parables, African folk stories, and television commercials are so effective.

A good story requires four things: character, conflict, resolution, and organization.² In a lawsuit, as in a Dostoevsky novel, character development may be everything. Your goal as a lawyer is to make the judge like and understand your client, because readers instinctively root for characters with whom they empathize. Unlike a



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fiction writer, you cannot "make up" facts about your client out of thin air, but you *can* emphasize or de-emphasize certain facts, and control how those facts are presented. Start by using your client's name (not "plaintiff" or "defendant"), even in routine motions. Then describe your client. Can you pitch the case as a "David versus Goliath" story? If your judge understands that your client is a single mother struggling mightily to do right by her children, you've gone a long way toward winning your case.

The second element of a good story is conflict. Most legal disputes have more than enough of this. The trick, however, is to define the conflict in a way that reflects positively on your client's character. If your client is a sexual harassment plaintiff, you can tell a story of a woman struggling to keep her job and her sanity in an atmosphere of intimidation. If your client is the company, you can tell a story of a conscientious supervisor, good husband and father, wrongly accused of egregious acts to cover up for the employee's own shortcomings at work. Lawsuits should never be about money: they should be about clients' struggles to achieve laudable goals.

The third element is resolution. In a good story, the resolution is tailored to the character and the conflict: Odysseus returns home and reclaims his household; Lear dies of heartbreak for Cordelia; Raskolnikov repents. Lawyers, of course, cannot script the resolution: judges and juries do this. The lawyers' job is to propose a resolution that fits the character and conflict.³ Doing so, however, is difficult for many lawyers; law school does a much better job of teaching students how to make effective technical arguments than it does of teaching students to make effective emotional arguments. Judges, however, may be less concerned with the technical legal arguments and more concerned with doing justice. For them, in other words, law often is a means rather than an end. If you can convince the judge to *want* to resolve the conflict in favor of your client, your client is likely to win.

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Effective Legal Writing

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The final element of a good story is organization. Stories are organized in three parts: order, disorder, and re-order. In developing character, the story starts at status quo:

Mary Smith, an accountant and a mother of three young children, was driving home from work on the afternoon of April 22, 2001.

Then, something disruptive happens:

James Jones, who had been drinking all afternoon at a local bar, ran a red light and collided with Smith, injuring her so severely that she required three days of hospitalization and ongoing physical therapy.

Finally, there is a re-order (or often, in a legal case, a proposed re-order):

Mary Smith brings this suit against Jones to recover for the medical expenses, lost wages, and suffering she incurred as she attempted to cope with the effects of the accident on her job and family life.

Opportunities for legal storytelling abound. Perhaps the most obvious is the jury trial. But even simple motions should tell a story. Actually, they should tell two stories. First, they should remind the judge, in a brief introductory paragraph, what the case is about (written in such a way, of course, that makes the judge want to root for the client). Second, they should tell a story of what it is that the lawyer is asking for. A

motion to compel discovery, for example, should describe the information sought, why it is relevant and why the client is entitled to it, and what the attorney has done so far to try to obtain it (order). The motion then should describe what the opposing party/attorney has done to frustrate the discovery (disorder / conflict). Finally, the motion should ask the judge to compel discovery (re-order / resolution).

One of the most overlooked opportunities for storytelling is the case description in motions and legal memoranda. Sometimes, a case description story is unnecessary, such as when the principle of law the case stands for, and the application of that principle to the present case, is undisputed. Often, however, a more extensive discussion of the case is necessary. Describing the case as a story makes it easy for the reader to understand what the case stands for. Start by providing the case name, identifying the court, and briefly summarizing what the case stands for:

In Commonwealth v. Vinson⁴ . . . , the Kentucky Supreme Court held that the 1993 amendments to the Kentucky Whistleblower Statute were not retroactive.

Then, identify and describe the parties:

The case involved two employees that the Kentucky Department of Agriculture demoted from supervisors to pesticide inspectors.

Tell a story, in chronological order, of what happened, first describing the underlying facts, and then describing what happened in the lower courts. The conflict / disorder in the case de-

scription is not the underlying conflict between the parties, however: it is the open issue of law. For example:

On appeal, the Department argued that the trial court improperly had determined liability using the amended version of the whistle-blower statute rather than the original version of the statute which was in effect at the time the employees were demoted. The employees, on the other hand, argued that . . .

The resolution / re-order is the Court's holding:

The Court held that the 1993 amendments imposed a change in substantive law which should not be imposed on the Department of Agriculture retroactively.

People like stories with happy endings. (You will be happy to know, for example, that Mr. Allison's paper, with the extended hypothetical, has been accepted for publication in the American Journal of Trial Advocacy.) So do judges and juries. The rub, of course, is that in a lawsuit, only one party is likely to be happy with the ending. The lawyer's job is to tell a story that "fits" the desired ending, so that it's *your* client whose ending is happy. ■

ENDNOTES

1. Mr. Allison's name is used with his permission.
2. Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459, 467 (2001).
3. *Id.* at 472.
4. 30 S.W.3d 162 (Ky. 2000). For a thorough discussion of this case, see Richard A. Bales & Joseph S. Burns, *A Survey of Kentucky Employment Law*, 28 N. Ky. L. Rev. 219, 260-61 (2001).

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Transitions

Transitions tell your reader, as Humphrey Bogart said to Ingrid Bergman in *Casablanca*, "where you've been and where you're going." Transitions tie together sentences and paragraphs; they link familiar material (which you already have discussed) to unfamiliar material (which you are about to discuss). A missing or inappropriate transition can leave your reader with a confusing jumble of ideas.¹

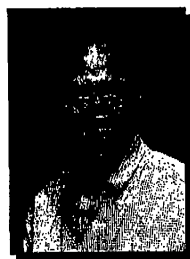
Transitions exist at many levels. Large-scale transitions, such as road maps and transitional paragraphs, link large sections of the writing together. Small-scale transitions may be no more than a sentence or a clause or a word. They are, however, equally important, because they link together issues, sub-issues, and cases.

Large-scale Transitions

Road maps² are placed near the beginning of a writing, and they tell the reader where the writing is going. They typically begin with a one-sentence thesis statement ("Defendant is entitled to summary judgment because . . ." or "This article argues that . . .") followed by an itemization of the sections of the writing ("Part II provides an overview of the relevant facts of this case. Part III discusses plaintiff's claim for wrongful death. Part IV discusses . . ."). The roadmap helps the reader understand how the entire writing "fits" together. Transitional paragraphs transport the reader from one part of your writing to the next. They are like bridges, joining one part of the writing to the next. For example, you may have just finished discussing a threshold jurisdictional issue. Before turning to the substantive issues, write a paragraph summarizing your conclusions on the jurisdictional issue and letting the reader know that you are moving on to the substantive issues.³ Without such a transitional paragraph, the reader may read your discussion of substantive issues wondering all the while what that discussion has to do with jurisdiction.

Small-scale Transitions

Transitional sentences and phrases can be a very useful way to link paragraphs together. An effective way to do this is to start a paragraph with the last idea in the preceding paragraph. For example:



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. . . The Kentucky Supreme Court, in *First Property Management Corp. v. Zarebidaki*,⁴ held that the proper standard for causation is whether the impermissible reason for the adverse employment action "was a substantial and motivating factor."

The plaintiff can show the requisite causal connection in a variety of ways . . .

Another effective way to link paragraphs together is the "internal preview." For example,

Founder [v. *Cabinet for Human Resources*]⁵ creates **three** problems. **First**, it is contrary to the plain language of KRS § 344.270 . . .

Second, *Founder* frustrates the legislature's intent to . . .

Third, . . .

The key words in this series of paragraphs are in bold. They make it easy for the reader to understand where the writer is going. This technique also is very effective when explaining the elements of a cause of action. For example:

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Under Kentucky law, there are four elements to the tort of intentional infliction of emotional distress. First . . . Second . . .

A single word or phrase often can serve as a very effective transition between sentences or cases. *On the other hand* tells the reader that you are changing direction. *Similarly* tells the reader that the following material is similar to the preceding material. *Therefore* tells the reader that you are about to summarize.

Transition Tips

First, overlap. Start a sentence with the concluding thought of the previous sentence, and put new material toward the end of the new sentence. Do the same thing with paragraphs, with subsections, and with sections.

Second, use repetition to emphasize important terms or ideas. A similar technique is dovetailing, which is the use of words with a similar linguistic base such as "denial" and "deny."⁶

Third, use demonstrative pronouns (this, that, these, those). These act as "pointer words" to nouns in preceding sentences or paragraphs.⁷

Fourth, use "tiebacks." Tiebacks are sentences or paragraphs that refer back to your thesis. A summary judgment motion, for example, should have several tiebacks to the general theme, which usually will be some variation on the theme that there are (no) disputed material facts.

Fifth, use "mini introductions" throughout your writing to tell the reader where you are going. Use "mini conclusions" to sum up a point and to tell the reader that you are moving to a different point.

Sixth, use a formal outline structure within your writing for headers. This makes it unlikely that the reader will get so wrapped up in a subpoint that the reader forgets how that subpoint relates to the overall argument. If your writing is particularly lengthy, consider putting a table of contents, again in formal outline form, up front.

Finally, use transitional words frequently. For example:⁸

To illustrate: for example, for instance, such as.

To contrast: however, on the other hand, despite, nonetheless, but, conversely.

To add: and, also, additionally, another, moreover, besides, furthermore, in addition, likewise.

To concede: although, doubtless, even though.

To summarize: therefore, thus, consequently, accordingly, in conclusion.

ENDNOTES

1. David E. Sorokin, *And Now for Something Completely Different*, 82 Ill. B.J. 45 (Jan. 1994); Terri LeClercq, *Expert Legal Writing* 127-34 (2000).
2. K.K. DuVivier, *Road Maps*, 22 Colo. Law. 25 (1993).
3. Sorokin, *supra* note 1.
4. 867 S.W.2d 185 (Ky. 1993).
5. 23 S.W.3d 221 (1999). For an extended discussion of *Founder*, see Richard A. Bales & Joseph S. Burns, *A Survey of Kentucky Employment Law*, 28 N. Ky. L. Rev. 219, 266-68 (2001).
6. Terri LeClercq, *Legal Writing Style* 19 (2000); Anne Enquist, *The Legal Writing Handbook* 565 (1998).
7. Sorokin, *supra* note 1.
8. Most of the sources cited above contain extensive lists of transitions. See also Mary Bernard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* 324 (2d ed. 1993).

A Series

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Balance

Prose, like a symphony or a landscape painting, needs balance. This essay will discuss three types of balance that are essential to well-written prose: subject-verb agreement, noun-pronoun agreement, and parallel sentence construction.

1. Subject / verb agreement. Singular subjects should have a singular verb, and plural subjects should have plural verbs. When two singular nouns in the subject are joined by a conjunction, the verb should be plural, as in *The lawyer and the client were pleased with the contract negotiations*. However, prepositional phrases that come between the subject and the verb do not affect the verb, as in *The partnership of ten attorneys is unable to agree on anything*. (partnership . . . is). Similarly, subjects and verbs within dependent clauses should agree with each other, but do not affect the subject and verb in the main clause. An example is *One of the contracts the parties are signing requires arbitration of any future disputes*. (parties . . . are signing; one . . . requires).

Another common problem with subject / verb agreement arises with collective nouns. Examples of collective nouns include *jury*, *faculty*, *committee*, and *government*. Collective nouns are treated as singular subjects, and therefore get singular verbs. For example, *The jury is deliberating*. (jury . . . is), but *The jurors who parked in the garage are unhappy about the parking fee*. (jurors . . . are).

2. Noun / pronoun agreement. A pronoun is a word that stands for a noun. A pronoun usually has an antecedent, which is a noun that precedes the pronoun and that the pronoun refers to. A pronoun should have the same number, person, and gender as its antecedent. If multiple pronouns or antecedents exist, it should be clear which pronouns correspond to which antecedents.



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The most common noun / pronoun problem is disagreement in number. Two factors often contribute to this problem. The first is that the antecedent and the pronoun may be separated by a wide gulf of clauses. The second is the commendable desire to avoid sexist language. An example of both factors is: *A person who drives after drinking more than a few drinks should expect to have his / her / his or her [but not their] license revoked*. The pronoun, like the antecedent person, must be singular.

Just as pronouns must agree in number, they also must agree in person. An example is: *A lawyer should promptly return phone calls, or you will soon lose your clients*. This sentence is incorrect, because the antecedent is in the third person but the pronoun is in the second person. Re-cast it as *A lawyer should promptly return phone calls to avoid losing clients*.

Pronouns also must agree in gender. Judge Karen Thomas, ruling that Bob had violated the terms of his probation, exercised her authority to put him back in jail. If Bob is changed to Jill, or if the judge's name is changed from Nancy to Leonard, the sentence becomes confusing.

Finally, a pronoun should clearly refer to a particular antecedent. An example is the sentence *Because he was screaming loudly, the judge ordered the bailiff to remove the defendant from the courtroom*. To help make it clear who is screaming, make sure the antecedent precedes the pronoun, and don't separate the pronoun and antecedent with other similar nouns.

3. Parallel sentence construction. Keep likes alike. Similarity of form helps the reader recognize similarity of content and function.¹ The Beatitudes, for example, would be much less effective rhetorically if written:

Blessed are the poor in spirit . . .

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*People who mourn will be
happy in the long run . . .*

Meek people are blessed too . . .

*Also, if you are hungry and
thirsty for righteousness . . .*

Keep syntactically equal items parallel.² For example: *The lawyer's job includes writing briefs, arguing motions, and to draft contracts.* *Writing* and *arguing* are participles; *to draft* is a gerund. Changing *to draft* to *drafting* emphasizes the similarities among the three duties.

Similarly, numbered lists and headings should be parallel. For example: *Plaintiff argued that (1) she had been wrongfully discharged, (2) defamation, and (3) that her former employer had violated the KCRA.* Here, not only are the con-

tents of each list syntactically different, but the signal "that" is used inconsistently: *Plaintiff argued that her former employer (1) wrongfully discharged her, (2) defamed her, and (3) discriminated against her in violation of the KCRA.*

Conclusion

Unbalanced prose is difficult to understand. When proofing your prose, pay particularly close attention to complex sentences and numbered lists. Match subjects to verbs, nouns to pronouns, and like phrases to like phrases. This will make your prose easier to read and more persuasive. ■

Footnotes

1. William Strunk Jr. & E.B. White, *The Elements of Style* 26 (4th ed. 2000).
2. Terri LeClercq, *Legal Writing Style* 41 (2d ed. 2000).

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Headings

Good legal writing is divided and subdivided using headings. Headings serve two purposes. First, they break long, complex material into more-easily digested pieces. Second, headings function as signposts that guide your reader through your prose.

Headings should be:

1. Structural. Use traditional outline form: I. / A. / 1. / a. / (1.) / (a.). Anything else is likely to confuse your reader. If you get to a sub-level below (a), you probably need to restructure your argument. Use a transitional paragraph to preview a set of equivalent headings. For example, before describing each of the elements of defamation in detail under separate headings, you might say: "The tort of defamation has five elements: (1) a written or oral statement, . . ."

2. Descriptive. A heading should label and summarize the material that follows it.¹ *Element 1, The Third Circuit Approach*, and *Anhauser v. Parman* convey little. Instead, use *Element 1: A Written or Oral Statement*, or *The Immediate Liquidation Approach*.² Instead of using a case name, use the heading to tell the reader (briefly) what the case stands for.

3. Short. Headings are like billboards along a street: if they are too long, folks will whiz by without reading them. Whenever possible, try to keep headings one line or less. Sometimes, convention makes this impossible, as when framing a full-sentence legal issue in an appellate brief. Even in these instances, however, try to edit the heading down as much as possible.

4. Independent. Headings should be independent of the text that follows. Readers who skip a heading should not become lost. Headings are a built-in redundancy.

5. Consistent. Headings should be consistent in two ways. The first is content and grammatical structure. If your first Roman-numeral-level heading is a full sentence, then all subsequent Roman-numeral-level headings should be full sentences. Similarly, if your first subheading under a particular Roman numeral is a participle phrase, then all subsequent subheadings under that Roman numeral should be participle phrases. For example, all numbered headings in this essay are adjectives.



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This does not mean that all subheadings throughout your document must be consistent. It is perfectly acceptable for your Roman-numeral-headings to be participle phrases and your subheadings to be adjectives, or for your sub-headings under Roman numeral II to be full sentences and your sub-headings under Roman numeral III to be nouns. The important thing is to maintain consistency within a particular grouping – keep like headings alike.

The second way that headings should be consistent is in typography. Again, it is acceptable to vary the typography between different levels, for example centering your Roman-numeral-headings and putting your A/B/C-subheadings flush left. The important thing is that all Roman-numeral-headings should be treated identically, and all A/B/C-subheadings should be treated identically (even when they are under different Roman numerals).

Check the following for typographical consistency:³

- Capitalization: Use SMALL CAPS or ALL CAPS only for the highest-level headings. For all but

Continued

the lowest-level headings, capitalize the first letter of every word, excluding articles (a/an/the), short (less than four letters) conjunctions or prepositions, and "to" in an infinitive. Even these words should be capitalized if they are the first word in the heading. For the lowest-level headings, you may choose to capitalize only the first word of the heading.

- Type style: Bold or italics helps headers stand out from the text.
- Progressive indents: Use sparingly. If there are more than a few heading levels, the headings tend to be crowded on the right side of the page. Use a hanging indent to draw attention to the heading level.

The highest-level headings should be centered; the next-level heading should be flush left.

- Spacing: Single-space all headers. If your document is single-spaced, skip a line before and after each header to set it off from the text.
- Periods: Use periods after all letters and numbers in a traditional outline. Use a period after a heading only if the heading is run-in with the text (as the numerical headings in this essay are) or if the heading is a complete sentence.

Conclusion

Headings serve a variety of purposes. They break complex material into small pieces that readers can more readily understand. They help readers follow the structure of your argument. They cue readers to topic changes, so readers can pause and reflect on what they have just read. Headings are an important component of effective legal writing.

Footnotes

1. TERRI LeCLERCQ, *LEGAL WRITING STYLE* 8 (2000).
2. See, e.g., Donald B. Smith & Richard A. Bales, *Reconciling Labor and Bankruptcy Law: The Application of 11 U.S.C. § 1113*, 2001 L. REV. M.S.U.-D.C.L. 1145, 1145.
3. BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* 37, 51, 73-74 (2002).

SENTENCES

"Long is not wrong,"¹ but short and simple is easier to understand and retain. Here are some tips for creating persuasive, memorable sentences.

1. Keep it short. I have a dream. Let it be. We shall overcome. No new taxes. Short sentences are powerful; length often comes from qualifiers that dilute or hide the primary message. This doesn't mean that *every* sentence should be short; good writers vary the length and form of sentences to avoid monotony. However, if your sentences average more than about twenty words each, you are likely to frustrate your reader.



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2. Increase writing density by editing repeatedly, omitting words or phrases that serve no useful function (*the fact that*), and omitting redundancies (*mutual agreement*).

3. Use semicolons, and colons with numbered lists, to signal close relationships between ideas. For example, *In Kentucky, the tort of defamation contains five elements: (1) a false and defamatory statement, (2) about the plaintiff, (3) communicated to a third person recklessly or negligently, (4) that results in injury to the plaintiff's reputation, and (5) that is made without privilege.*² Each sentence should contain only one idea, or should include punctuation that demonstrates how related ideas fit together.

4. Keep introductory clauses short.³ Take, for example, the following sentence: *Before the*

police officer arrived on the scene and observed the suspect drop a plastic bag onto the sidewalk and flee on foot down the alley, over chain-link fence, and into a white Ford Taurus, a civilian called 911 to report a series of drug transactions. Even reading silently, I'm out of breath before I get to the subject (civilian) and verb (called). One solution is to flip the sentence so the main idea precedes the subordinate clauses: *A civilian called 911 to report a series of drug transactions, after which the police officer arrived* Better yet, use two sentences: *A civilian called 911 to report a series of drug transactions. Then, the police officer arrived*

5. Avoid long clauses (or strings of clauses) which separate the subject from the verb. For example, *The Supreme Court, which in Gilmer had avoided the Federal Arbitration Act's "contracts of employment" exclusion by noting that the issue had not been argued to either the trial court or circuit court in that case, resolved the issue in Circuit City* By the time the reader gets to the verb *resolved*, she has long since forgotten the subject *Supreme Court*.

Writing short and (mostly) simple sentences helps break complex ideas into smaller pieces that are more easily understood. Legal concepts already are difficult enough without the added complexity of stultifying prose.

Footnotes

1. TERRI LECLERCQ, *EXPERT LEGAL WRITING* 44 (1995).
2. *Columbia Sussex Corp. v. Hay*, 627 S.W.2d 270, 273 (Ky. Ct. App. 1981).
3. Mark Mathewson, *Law Students, Beware*, originally published in *STUDENT LAWYER*, reprinted in 8 *SCRIBES J. LEG. WRITING* 141, 143 (2001-02).