HOW TO WRITE GOOD LEGAL STUFF

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This is a guide to good legal writing. Good writing consists of avoiding common clunkers and using simpler replacements. The replacements aren't always perfect synonyms but 90% of the time they're better than the original. Warning: Some changes also require grammatical twiddling of other parts of the sentence. This is not a guide to proper high English usage. We don't give two hoots whether you dangle participles, split infinitives or end sentences with prepositions. We care that you can write clearly.

PART ONE -- TOP 10 SIGNS OF BAD LEGAL WRITING

10. USING PASSIVE RATHER THAN ACTIVE VOICE

BAD LEGAL WRITERS USE PASSIVE VOICE
- a) "the ruling was made by the judge"
- b) "the complaint was filed by the plaintiff"
- c) "It was held that..."

GOOD WRITERS USE THE ACTIVE VOICE
- a) "the judge ruled"
- b) "the plaintiff filed a complaint"
- c) "the court held..."

SPOTTING GUIDE
- a) Check for the word "by" (search for "by[space]")
- b) Look for sentences or phrases starting with "it is" or "it was."

EXCEPTION. Use the passive voice when you do not know the actor or when the result is more important that who did it.
- a) "The documents were mysteriously destroyed." (actor unknown)
- b) "Ted Stevens was re-elected anyway" (result important)

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9. NOMINALIZATIONS

BAD LEGAL WRITERS TURN VERBS INTO NOUNS, AND THEN ADD AN EXTRA VERB TO TAKE THE PLACE OF THE ONE THEY CONVERTED

a) "reached a conclusion"
b) "granted a continuance"
c) "involved in a collision"
d) "take action"

GOOD WRITERS JUST USE THE FIRST VERB

a) "concluded"
b) "continued"
c) "collided"
d) "act"

SPOTTING GUIDE

Look for words ending in "ion."

8. FEAR OF CALLING THINGS BY THEIR NAMES

BAD LEGAL WRITERS ARE AFRAID TO CALL THINGS BY NAME, USING GENERIC TERMS INSTEAD

The plaintiff
The defendant
The day in question
The scene of the accident
Her place of employment

GOOD WRITERS GIVE THEIR CHARACTERS NAMES

Susan Jones
Michael Fitzhugh
June 3rd
In the parking lot
Pizza Hut

7. VERBOSITY

BAD LEGAL WRITERS USE RUN-ON SENTENCES CONTAINING NUMEROUS QUALIFYING PHRASES

"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."

GOOD WRITERS USE SEVERAL SHORT SENTENCES

"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."

6. QUALIFYING PHRASES

BAD LEGAL WRITERS PUT QUALIFYING PHRASES IN THE MIDDLE OF SENTENCES WHERE THEY DO NOT BELONG

a) "the court, although it limited its holding, held that a bicyclist must adhere to traffic rules"
b) "the court has, although with limits, held that a bicyclist must adhere to traffic rules"
c) "the court held, although with limits, that a bicyclist must adhere to traffic rules"

GOOD WRITERS PUT QUALIFYING PHRASES AT THE END OF SENTENCES OR ELIMINATE THEM ALTOGETHER

a) "the court held that a bicyclist must adhere to traffic rules, although it limited its holding ..."
b) "the court held that a bicyclist must adhere to traffic rules"

5. REDUNDANCY

BAD LEGAL WRITERS LIST EVERY KNOWN SYNONYM, AS IF THEY WERE WRITING A THESAURUS, IN A MISGUIDED EFFORT TO BE PRECISE

a) "Every town, city, or village"
b) "Cease and desist"
c) "Give, devise and bequeath"
d) "Null and void"

GOOD WRITERS USE A SINGLE WORD

a) "Every municipality"
b) "stop"
c) "give"
d) "void"

SPOTTING GUIDE Look for "or" or "and."

4. MEANINGLESS ADVERBS USED IN A VAIN EFFORT TO MAKE A WEAK POINT APPEAR STRONGER

BAD LEGAL WRITERS USE MEANINGLESS ADVERBS THINKING THEY MAKE AN ARGUMENT STRONGER

a) Chester v. Morris clearly held that bicyclists must adhere to the rules of the road.
b) The fact that he was drunk is extremely important
c) The holding is very narrow.
d) It is really important that he was not wearing a helmet.
e) He was undoubtedly drunk.
f) It is manifestly obvious that drunken bicyclists are dangerous.

GOOD WRITERS DILIGENTLY AVOID USELESS ADVERBS

a) Chester v. Morris held that bicyclists must adhere to the rules of the road.
b) The fact that he was drunk is important

c) The holding is narrow.
d) It is important that he was not wearing a helmet.
e) He was drunk.
f) It is obvious that drunken bicyclists are dangerous.

SPOTTING GUIDE
Look for words ending in "y"

3. MEANINGLESS WEASEL WORDS USED BECAUSE YOU'RE AFRAID TO TAKE A POSITION

BAD LEGAL WRITERS ARE AFRAID OF BEING WRONG AND USE WEASEL WORDS IN AN EFFORT TO AVOID TAKING A CLEAR POSITION

alleged
maybe
quite possibly
at best/at least
might be
seems to
appears to
perhaps
so-called
implicates
probably
tends to

2. DOUBLE NEGATIVES

ONE OF THE CLEAREST SIGN OF THE BAD LEGAL WRITER IS THE DOUBLE NEGATIVE

"not uncommon"
"failed to show inability"
"not insignificant"
"not uncomplicated"
"no small part"
"not incapable"
"not inappropriate"

GOOD WRITERS USE SINGLE POSITIVES

"common"
"showed ability"
"significant"
"complicated"
"large part"
"capable"
"appropriate"

1. PHRASES WITH ABSOLUTELY NO MEANING WHATSOEVER

AND THE CLEAREST SIGN OF THE BAD LEGAL WRITER IS THE USE OF TOTALLY MEANINGLESS (AND USUALLY POMPOUS) PHRASES

"I would like to point out that Chester v. Morris was overruled"
"I would argue that Chester v. Morris is not applicable."
"It should be noted that Chester v. Morris was decided before the statute was amended."
"Evidence that the defendant was drunk does not operate to remove the issue of contributory negligence"
"Despite the fact that the defendant was drunk, he operated his bicycle carefully."
"In fact, he should be commended."
"During the course of his ride, he never fell off his bicycle"
"It has been determined that he was wearing his helmet."
"It is obvious that a drunken bicyclist is a danger on crowded streets."
"It is clear that he had the right of way and was justified in crossing the street"
"Chester v. Morris is distinguishable (or worse, clearly distinguishable). It does not apply because it involved an intoxicated bicyclist"

GOOD WRITERS OMIT THEM

"Chester v. Morris was overruled"
"Chester v. Morris is not applicable."
"Chester v. Morris was decided before the statute was amended."
"Evidence that the defendant was drunk does not remove the issue of contributory negligence"
"Despite the defendant's drunkenness, he operated his bicycle carefully."
"He should be commended."
"During his ride, he never fell off his bicycle"
"He was wearing his helmet."
"A drunken bicyclist is a danger on crowded streets."
"He had the right of way and was justified in crossing the street"
"Chester v. Morris does not apply because it involved an intoxicated bicyclist"

PART TWO -- A DICTIONARY OF LEGALESE

Group one -- hideous prepositional phrases and their plain English alternatives

at present -- now
at the place -- where
at the present time-- now
at the time that -- when
at that point in time -- then
at this point in time -- now or currently
by means of -- by
by reason of -- because
for the duration of -- during or while
for the purpose of -- to
for the reason that -- because
from the point of view -- from
in a case in which -- when or where
in accordance with -- by or under
in all likelihood -- probably
in an X manner -- Xly, e.g., "hastily" instead of "in a hasty manner"
in close proximity -- near
in connection with -- with or about or concerning
in favor of -- for
in light of the fact that -- because or given that
in order to -- to
in point of fact -- in fact (or omit altogether)
in reference to -- about
in regard to -- about
in relation to -- about or concerning
in terms of -- in
in the course of -- during
in the event that -- if
in the nature of -- like
inasmuch as -- because or since
on a number of occasions -- often or sometimes
on the basis of -- by or from
on the part of -- by
to the effect that -- that
until such time as -- until
with a view to -- to
with reference to -- about or concerning
with regard to -- about

Group two -- hideous phrases ending with prepositions and their plain English alternatives

a number of -- many or some or give the actual number
is desirous of -- wants
is dispositive of -- disposes of
concerning the matter of -- about
the totality of -- all
is binding on -- binds
accord respect to -- respect
advert to -- mention
due to -- because
prior to -- before
is able/unable to -- can/cannot

Group three -- bad ways lawyers start sentences

As stated previously, ...
There are ....
It is ....
I might add ...
It is interesting to note ...

Group four -- words commonly viewed as sexist and their neutral alternatives

rights of man -- human rights
reasonable man -- reasonable person
workman -- worker
congressman -- member of Congress
foreman -- supervisor or foreperson
chairman -- chair or chairperson
the judge .... he -- the judge .... the judge

Group five -- words that only lawyers use, and their plain English alternatives

accord (verb) -- give
acquire -- get
additional -- more
additionally -- also
adjacent (to) -- next (to) or near
adjudicate -- determine/try
afforded -- given
aforementioned -- none --- omit
ambit -- reach or scope
any and all -- all
approximately -- about
ascertain -- find out
assist -- help

as to -- about
as well as -- and
case at bar -- this case
attempt (verb) -- try
cease -- stop
circumstances in which -- when or where
cognizant of -- aware or knows
commence -- start
conceal -- hide
consensus of opinion -- consensus
consequence -- result
contiguous to -- next to
counsel -- lawyer
deem -- find/believe
demonstrate -- show
desire -- want
donate -- give
echelon -- level
elucidate -- explain/clarify
endeavor (verb) -- try
ensue -- take place/follow
evidence (verb) -- show/demonstrate
evince -- show
exclusively -- only
exhibit (verb) -- show/demonstrate
exit (verb) -- leave
expedite -- hurry
facilitate -- help
firstly, secondly -- first, second, ...
foregoing -- these
forthwith -- immediately
frequently -- often
fundamental -- basic
has a negative impact -- hurts or harms
indicate -- show or say or mean
individual (noun) -- person
inquire -- ask
locate -- find
manner -- way
methodology -- method
modify -- change
narrate -- say
negatively affect -- hurt, harm or injure
notify -- tell
notwithstanding -- despite
numerous -- many

objective (noun) -- goal
observe -- see or watch
obtain -- get
owing to -- because
period of time -- time or period
permit -- let or allow
personnel -- people
pertains to -- refers or belongs to
point in time -- time or point
portion -- part
possess -- have
post hoc -- hindsight
prior to -- before
procure -- get
provide -- give
provided that -- if or but
provision of law -- law
purchase -- buy
purport -- claim or intend
rate of speed -- speed
referred to as -- called
remainder -- rest
render assistance -- help
request (verb) -- ask
require -- need
respond -- answer
retain -- keep
said (adjective) -- the or this ("this contract" not "said contract")
stipulates -- says
subsequent -- later
subsequent to -- after
subsequently -- after or later
substantiate -- prove
sufficient -- enough
sufficient number of -- enough
termination -- end
the case at bar -- this case
the fact that -- that
the instant case -- this case
the manner in which -- how
upon -- on
utilize -- use
verbatim -- word for word
was aware -- knew
wheras -- since/although

PART THREE - CONCISE GUIDE TO HOW TO WRITE CRITICALLY ABOUT ANYTHING

STEP ONE -- GENERATE ALTERNATIVES

Alternatives can come from current news stories, interesting cases, common experience or your personal experience. In litigation, the alternatives are often defined by the two sides of the case.

In scholarly and judicial writing (in which the author pretends to be neutral), the alternatives should be stated fairly -- the best possible case for each side. For example:

> This case presents the issue of whether a physician should be exempt from jury duty. A good argument can be made that the community benefits from having its doctors caring for the sick. On the other hand, we have a historical principle of universal jury service. Surely the community also benefits from having its juries representative of a cross-section of all the community.

In advocacy writing (in which the pretense of neutrality is impossible), you should slant the alternatives favorably. You state the best plausible case for your side and the worst plausible case for the other side, but both sides must be plausible. This is where the famous "slippery slope" argument comes into play -- you point out the logical implication of the other side's position, and then attack the implication rather than the original position. For example:

> The state argues that Dr. Jones should be exempt from jury duty because he is a surgeon and has patients waiting. That argument could be made by all educated professionals -- doctors, dentists, lawyers, architects. If they are all excused, we end up with a predominantly blue-collar jury that does not fairly represent a cross-section of the community. We argue that everyone must take his or her turn serving on a jury, so we can achieve a jury that is truly a fair cross-section of the community.

STEP TWO -- MARSHAL THE RELEVANT INFORMATION

An informed choice rests on information. In the absence of information, choices can only be made on the basis of personal biases, stereotypes and prejudices. Whether you are writing in a neutral or an advocacy style, you want your conclusion to appear to be reasoned rather than based purely on bias. Therefore, you need to marshal information which common sense suggests will be relevant to an intelligent decision. Such information is of three kinds: facts, legal authority, and social authority.

In "neutral" scholarly and judicial writing, all relevant information is mentioned, regardless of which side it supports. Neutral writing must summarize the information favoring each alternative. For example (very abbreviated):

> Court records indicate that the issue has come up in Bloomington seven times in the last five years -- six physicians have been excused from jury service, one has served. There are no cases in Indiana on this issue, although cases concerning other exemptions have held that the matter is generally within the discretion of the

General Assembly. Thirty other states have statutes specifically exempting doctors; twenty do not. Other state courts have also generally held that the question of eligibility for jury service is within the discretion of the legislature. The Supreme Court, however, has held that the sixth amendment guarantee of an "impartial jury of the state and district" requires that the jury be drawn from a fair cross-section of the community. Any blanket occupational exemptions must be justified by a compelling state interest, although individual decisions to excuse someone from jury service are within the trial judge's discretion. Against this background are several studies by social psychologists showing that juries without educated elite jurors such as physicians produce different verdicts than juries on which educated jurors participate.

In advocacy writing, the summary of relevant information should be slanted to favor your side. Note that I said slanted, not tipped over onto its head. You can't misstate facts or omit major Supreme Court precedent. However, you can be selective in which facts you report and which of the hundreds of relevant cases you include. Two examples (very abbreviated):

For the state: Court records indicate that the issue has come up in Bloomington rarely in the last five years and that not all physicians are excused. Indiana cases hold generally that deciding whether to create a statutory exemption is within the discretion of the General Assembly. A majority of other states follow the Indiana practice of exempting doctors, and the practice has been approved by a majority of state courts. The Supreme Court has held that a jury in a criminal case should be drawn from a fair cross-section of the community and that any exemption that removes a substantial number of potential jurors from the pool must be justified by a compelling state interest. The Court has not previously ruled on the issue of physician exemptions, but has said that the trial judge's decision in an individual case is within the judge's discretion. The issue has not been specifically addressed by the social psychologists who study jury behavior.

For the defense: Court records indicate that in every Bloomington case in the last five years a physician who invoked the exemption was excused from jury duty. There are no cases in Indiana on this issue, and other states are divided on the wisdom of creating a blanket physician exemption. The U.S. Supreme Court has held that because the sixth amendment guarantee of an "impartial jury of the state and district" requires that the jury be drawn from a fair cross-section of the community, any blanket occupational exemption must be justified by a compelling state interest. Several studies by social psychologists demonstrate that juries without physicians produce different verdicts than juries on which physicians and other educated elite participate.

STEP THREE -- EXAMINE THE RELEVANT INFORMATION CRITICALLY

The important part of an argument is the critical examination of the information that could be used to support one or the other alternative. A critical examination is one that uses principled reasoning to assess the relative strengths and weakness of each piece of supporting information -- bolstering the pieces of your own argument and weakening your opponent's. Bear in mind that

information is rarely completely reliable or completely bogus. For example, eyewitness testimony from a 85-year-old woman with cataracts describing a complete stranger she saw for three seconds during a bank robbery is not totally useless -- it has some value. Some common examples:

- Did a witness have an adequate opportunity to observe? Is the witness of good character. Does s/he have a bias or vested interest?

- Is a case cited in a brief recent or old, from this or a different jurisdiction, from a lower or higher court, a majority opinion or a split decision?
- Does an expert have appropriate education and training, adequate experience, a bias or vested interest, good institutional affiliations?
- How are the facts of another case similar or dissimilar
- Is an argument or witness account consistent or inconsistent with other evidence, human experience, or the laws of physics?
- Has a case been cited approvingly or criticized by other judges, in treatises, or in law review articles?
- Is a witness's opinion supported by adequate personal observations? Do the data support it?

STEP FOUR -- REACH A CONCLUSION ABOUT WHICH IS THE BETTER ALTERNATIVE

The better solution does not need to be the best; it does not need to be perfect. It is enough that one alternative rises above the other(s). If no alternative is clearly better than any other, the better solution may be a compromise.

The alternative you ultimately select is not necessarily the one that "wins" the critical analysis. Legal decision making is not mathematical, and no judge or lawyer would weigh all issues equally. For example, some judges place great weight on the single principle of how widely held a particular legal doctrine is, or adheres to precedent for the sake of stability in the law, even if the reform alternative has the better of most of the analysis. However, a good judge first expresses some concern about the result, given that his or her analysis of other factors suggests that the majority may be wrong.