



## A Fresh New Face

# Spring Cleaning for Legal Writers

By Kirsten E. Small

It's April. The sun is shining, the birds are singing, and householders everywhere are engaged in that yearly ritual known as "spring cleaning." This year, don't limit yourself to cleaning out the garage; take the time to tidy up your briefs and memoranda, too. Below are a few suggestions of ways to overhaul your legal writing to give it a fresh new face for spring.

**Lose the legalese.** My favorite definition of legalese is Justice Scalia's: "[I]f you used the word at a cocktail party, would people look at you funny?" Bryan A. Garner, *Interview of Justice Antonin Scalia*, 13 Scribes J. Legal Writing 51, 58 (2010). For example, you wouldn't saunter up to the bar and say, "I'd like an Old Fashioned. If you don't know how to make one, I crave reference to the Bartender's Manual."

**While you're at it, avoid (most) abbreviations.** Unless an acronym or initialism is already part of the vernacular (e.g., AWOL or RPM), abbreviations slow readers down. See generally Garner's *Modern Am. Usage* 2 (3d ed. 2009) (explaining the difference between acronyms and initialisms). A judge must stop reading to recall, for example, that "the BRC" is "the Blue Ribbon Commission." As Ninth Circuit Judge Alex Kozinski so memorably recalled,

In a recent brief I ran across this little gem:

LBE's complaint more specifically alleges that NRB failed to make an appropriate determination of RTP and TIP conformity to SIP.

Even if there was a winning argument buried in the midst of that gobbledegoop, it was DOA. Alex Kozinski, *The Wrong Stuff*, 1992 BYU L. Rev. 325, 328 (1992). In the example above, using "the Commission" instead of "the BRC" improves readability without increasing word count.

**Clean out the clutter.** Justice Louis B. Brandeis once remarked that "there is no such thing as good writing. There is only good rewriting." Hon. Paul H. Buchanan, Jr., *Memorable Quotes, et Cetera*, 42 Res Gestae 46 (1999). First drafts are often full of excess verbiage and unnecessary detail; therefore, your first draft should never be

your final draft. Lexical clutter may crop up in the statement of facts—does the court really need to know the precise dates of events? If not, omit them lest you "create[] your own red herring." Hon. Jacques L. Wiener, Jr., *Ruminations from the Bench: Brief Writing and Oral Argument in the Fifth Circuit*, 70 Tul. L. Rev. 187, 192 (Nov. 1995).

Despite Strunk and White's admonition to "omit needless words," lawyers (present company *not* excluded) have an inexplicable tendency to use several words when one will do just as well. We write "in the event that" instead of "if"; "at the time that" instead of "when"; "for the purpose of" instead of "to." Like dust bunnies under the couch, these phrases accumulate while our attention is elsewhere, and like the dust bunnies, they should be ruthlessly vacuumed up.

In the words of novelist Elmore Leonard, "Try to leave out the parts that readers tend to skip." *Elmore Leonard's Rules for Writers*, The Guardian, Feb. 24, 2010. In legal writing, that means block quotes. In survey after survey, judges have made clear that they skip over any block quote of more than a few lines. Paraphrase instead.

**Spruce up your formatting.** An old culinary maxim holds that diners eat first with their eyes—in other words, how a meal *looks* affects our perception of how it *tastes*. So, too, in legal writing: A well-formatted document aids comprehension. See generally Ruth Anne Robinson, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. Ass'n Legal Writing Dirs. 108, 111–14 (Fall 2004). For example, if you want judges to read your painstakingly crafted statement of the issues, don't put it in all caps. When your brain sees all caps, it thinks THIS IS NOTHING BUT A BUNCH OF RECTANGLES, MOVE ALONG. Studies show that use of all caps reduces reading speed by an average of 12 to 13 percent. See *id.* at 115–16.

Pay attention, also, to white space. Text is most legible when it is balanced equally with white space. See *id.* at 124. With that fact in mind, think about an 8½" x 11" page, with 1" margins, covered with text—a "slab of words in a vertical 7 x 9 rectangle." Linda L. Morkan, *Visual Rhetoric in the Appellate Brief*, For the Defense, July 2007, at 27. It's exhausting just to think about. Increase white space—and comprehension—with shorter paragraphs, judicious use of bulleted lists, and

**Writers' Corner**, continued on page 82



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**Writers' Corner**, from page 80  
left-justified margins. *See id.* at 31. If possible (*e.g.*, if the length limit is expressed as a number of words rather than a number of pages), increase your margins to 1¼” on each side.

As Ernest Hemingway once said, “easy writing makes hard reading.” A thorough spring cleaning of your writing habits takes time and effort, but you (and a court) will be rewarded with a clear, readable document. As for the garage, you’re on your own. **FD**