

And Your Point Is? Write Directly

by Robert S. Anderson

Good legal writing is direct. Being direct means getting to the point and sticking to the point. In litigation, our rules of procedure require directness.¹ Our judges plead for it² and sanction those who do not practice it.³ Our clients seek it, as well. The question is not whether, but how, to write to the point. This article will suggest two strategies for making your writing more direct: (1) make the reader a promise to be direct in the introduction of your piece; and (2) keep that promise by organizing the material to match the preview provided in your introduction and adopting a style that does not waste words.

Making a Promise to the Reader

Whether writing to inform or persuade, we as legal writers want the reader to understand what we have written. Be it a letter to a client, a memo to another lawyer, a brief to a court, or a contract for another party, legal writing is produced and read for a utilitarian purpose—not for pleasure. The reader is not motivated by interest to remain attentive to each point we have to make, but rather by a desire to get to the end, with the hope that what we have written will turn out to be worth the effort it took to read it.⁴

Accordingly, we cannot promise that what we have written will be spellbinding from start to finish. We can, however, promise something else—that we have a point to make that is worth the reader's time and attention. For example, this article has promised to provide strategies for making writing more direct. By stating that promise up front, and by previewing the points the article will make, the introduction proposed a reader-writer contract of sorts, the terms of which are: "Reader, if you will keep on reading, I will make two points that are worth your attention and not waste your time with anything else." Promising to make a point may not seem like much, but often it is enough to pique the reader's curiosity and sustain the reader's interest.⁵

Constructing the Introduction

The introduction is the best place to make your promise, because readers will encounter it when their attention is naturally at its highest. Most forms of legal writing are well-suited to the inclusion of

an introduction that previews the points that will be made in the rest of the piece. In addition to providing the reader with a substantive reason to continue, an introduction that provides a roadmap of the rest of the piece serves other useful purposes. The introduction can simplify a complex argument; it also can begin the job of persuasion by highlighting the most favorable facts or best points.

Keeping Your Promise

Naturally, the promise to make a point is nothing if it is not kept. In the body of the writing, there are both large-scale organizational adjustments and small-scale style fixes that the writer can make to keep the piece moving forward toward the conclusion.

Organizing the Information

Keeping your promise begins by organizing the information contained in the body of the piece to conform with the introduction's preview. Resist the temptation to digress from the point. In writing to a court, avoid lengthy preliminaries describing the procedural posture or factual background of the case. Instead, limit the discussion of the status and facts of the case to only that information that is relevant to the subject of the motion. For example, the court need not be informed that four depositions and two rounds of written discovery have taken place to determine a request for the jury to view the location of evidence. However, the status of discovery is relevant when framing a request for appointment of a special master to resolve discovery issues.

Prune your writing so that you keep to the points you outlined in the introduction. As a reader, you may have experienced the frustration of reading a piece that promised three points but only made two or, conversely, previewed two points but suddenly veered onto one or two more. Keep that experience in mind when you are writing, and you will spare your readers the same aggravation.

Minding the Details

Keeping the promise to be direct means minding the small details of your writing as much as mastering its large-scale organiza-

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K.K. DuVivier will be happy to address them through the Scrivener column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

Associate Professor K.K. DuVivier is on sabbatical during 2007–08. She has been writing this column continually since 1991 and will resume doing so in fall 2008. In her absence, Robert S. Anderson and Tanya Bartholomew will be writing the Scrivener articles.

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tion. The story goes that then-U.S. Secretary of State Alexander Haig was approached by an aide requesting a pay raise. Haig responded, “Because of the fluctuational predisposition of your position’s productive capacity as juxtaposed to government standards, it would be momentarily injudicious to advocate an increment.”⁶ One could say Haig practiced willful obfuscation, but I fear that to the layperson, another word describing his failure to be direct would be “lawyerly.”

Whether out of an instinct to cover all the bases, or to cover something else more dear, legal writing can devolve from something that expresses a precise point into a mush of obscurity and abstraction from which a reader may struggle to locate meaning. Even worse, convoluted writing may cause the reader to abandon the struggle altogether.

To avoid this fate, remember what you promised to say in the introduction and say it and nothing more. In this respect, the drive to write directly should dovetail with the more general virtue of writing concisely. Strunk & White’s *The Elements of Style* teaches:

Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that every word tell.⁷

Strunk and White’s concept that every word should “tell” means that each word and each sentence should add meaning that leads directly toward the ultimate conclusion.

Common Throat-Clearing Phrases

The throat-clearing phrases below should be used sparingly and eliminated when their inclusion does not aid the reader in understanding the sentence.

- | | |
|-----------------------------------|--------------------------|
| ➤ it is important to note that | ➤ obviously |
| ➤ it would appear that | ➤ notably |
| ➤ it may be argued that | ➤ it is essential that |
| ➤ it is more likely than not that | ➤ clearly |
| ➤ it must be remembered that | ➤ it is expected that |
| ➤ it is obvious that | ➤ it is significant that |

Every writer intends for each word to have meaning, and yet there remain examples of legal writing that sound like Alexander Haig’s bloated reply. Consider this less extreme example: “The simple truth is, though, that plaintiff and his attorney dropped the ball by means of failing to comply with the clear and straightforward requirements of the act.” It illustrates three types of writing that add verbiage without adding meaning: throat-clearing, compound expressions, and unnecessary repetition. These are relatively easy to spot and delete to make writing more direct.

Throat-clearing: Just as in conversation one might say, “Yes, well, the thing to note is . . .” as a preamble or means of announcing an intention to make a point, legal writers use up space telling the reader that something meaningful is about to be said. Throat-clearing often occurs at the beginning of a sentence, as in our example: “The simple truth is, though, that . . .” This opening clause does not add meaning to the sentence, because the sentence conveys the same idea after the first six words are removed. Proofread your work with a view toward judging whether you have included these or other like phrases in a context where the clause does not aid the reader in understanding the sentence. For other examples of throat-clearing, see the sidebar entitled “Common Throat-Clearing Phrases.”

Compound expressions: A close cousin of the throat-clearing phrase is the compound expression. Compound expressions use several or more words to communicate what could be said in one or two words. Our sentence says “by means of” when it could say “by.” Other examples of compound expressions, and their simpler substitutes, include:

- “subsequent to” = “after”
- “prior to” = “before.”⁸

These and similar compounds almost always can be deleted to make writing more direct. For more examples of compound expressions and their substitutes, see the sidebar entitled “Compound Expressions.”

Unnecessary repetition: The third problem adding to bloat in the example sentence is instances of unnecessary repetition of words or concepts. After the initial throat-clearing phrase, the subject of “plaintiff and his attorney” is duplicative in context. “Plaintiff” is probably sufficient. Likewise, the colloquial phrase “dropped the ball” is duplicative and therefore repetitive of the more substantive “failing to comply.” Also, the two adjectives “clear” and “straightforward” are two too many; it would be noteworthy only if the act’s provisions were not clear or straightforward. Finally, in context, the reader probably can presume that the provisions of the act that have not been complied with are “requirements,” making that term an unnecessary repetition of “act.”

Removing the throat-clearing phrases, compound expressions, and unnecessary repetition from the sentence—“The simple truth is, though, that plaintiff and his attorney dropped the ball by means of failing to comply with the clear and straightforward requirements of the act.”—leaves a much simpler sentence: “Plaintiff failed to comply with the act.” In proofing your own work, locate the “working words,” the ones that communicate meaning. Those usually are limited to the main subject, verb, and object. You may be able to delete other verbs, verb phrases, nouns, and modifiers for the sake of directness.⁹

Conclusion

From the writer’s perspective, the rigor and attention to detail that writing directly requires may seem like so much nit-picking. However, in the end, writing directly is a matter of respecting the reader’s time and attention. The writer who allows the prose to meander punishes the reader by forcing the reader to piece together the writer’s point amidst the digressions and the bloated sentences. In your writing, strive to be the direct writer who rewards the reader’s attention by making the “through-line” of the piece easy to follow and free of distraction.

Notes

1. C.R.C.P. 8(e)(1) (stating that no technical forms of pleadings or motions are required and that allegations in pleadings should be “simple, concise, and direct”).

2. See, e.g., *Morgens Waterfall Holdings, L.L.C. v. Donaldson, Lufkin & Jenrette Securities Corp.*, 198 F.R.D. 608, 610 (S.D.N.Y. 2001) (dismissing 103-page amended complaint without prejudice that was “hopelessly redundant, argumentative, and has much irrelevancy and inflammatory material”). The court’s discussion of what it expected a well-pled complaint to contain is instructive:

The rule is very simple. The rule is that a pleading contains a short and plain statement of the grounds on which the court’s jurisdiction de-

Compound Expressions	
Use this list to create your own self-editing checklist to consult during the proofing process. ¹	
Instead of	Use
subsequent to	after
prior to	before
in connection with	with about concerning
in relation to	about concerning
with reference to	about concerning
in favor of	for
by means of	by
by virtue of	by under
in accordance with	by under
in order to for the purpose of with a view to	to
in the event that	if
at that point in time	then
in the nature of	like
for the reason that	because

1. See Wydick, *Plain English for Lawyers*, 5th ed. (Carolina Academic Press, 2005) at 11 (listing these and additional examples).

pends, a short and plain statement of the claim and an appropriate demand for the relief the pleader seeks, and that each affirmative pleading should be simple, concise, and direct.

3. See, e.g., *Devore v. City of Philadelphia*, No. Civ. A. 00-3598, 2004 WL 414085 at *3 (E.D.Pa. Feb. 20, 2004) (reducing attorney fee award by \$150 an hour for time spent by attorney preparing pleadings and motions that the court found were “vague, ambiguous, unintelligible, verbose and repetitive”). Just as a court may punish those who present substandard written work, so may it praise those whose filings illuminate rather than confuse the matter at hand. See, e.g., *Capitol Hardware Mfg. Co. v. Natco, Inc.*, 707 F.Supp. 374, 375 n.1 (“The court compliments both sides for their briefs on the present motions, as they waste little effort in getting to the heart of the issues”).

4. See Brandt, et al., *The Craft of Writing* (Prentice-Hall, 1969) at 4-7.

5. *Id.*

6. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument*, 2d ed. (NITA, 2003) at 232, note 5, citing Lord Alfred Denning, *The Closing Chapter* (Oxford University Press, 1983) at 62.

7. Strunk and White, *The Elements of Style*, 3d ed. (Macmillan Publishing Co., Inc, 1979) at 23.

8. See Wydick, *Plain English for Lawyers*, 5th ed. (Carolina Academic Press, 2005) at 11 (listing these and additional examples).

9. *Id.* at 7-10. ■