

The Scrivener: Modern Legal Writing



White Space



by K.K. DuVivier

At times [the writer] may indulge himself with a long one [sentence], but he will make sure there are no folds in it, no vaguenesses, no parenthetical interruptions of its view as a whole; when he has done with it, it won't be a sea-serpent with half of its arches under the water; it will be a torch-light procession.

—Mark Twain

For several hundred years, a hallmark of legal writing has been its long complicated sentences and paragraphs. Although in many instances the grammatical construction may have been impeccable, failed examples of convoluted writing have subjected their legal authors to ridicule and parody throughout the centuries.

Assist your reader by providing white space for breaks. Consider the readers' response when confronted with a solid page of print. The same page will be less formidable when broken into three or four paragraphs. Logical break points can always be found, even if the whole page deals with just one idea or subject. Offer your readers "footholds . . . [to] clamber over the trying cliff-face of prose."¹ Facilitate communication by using shorter sentences and paragraphs.

One of the primary purposes of a paragraph is to carve material into bites that the reader can readily digest. If you make them a comfortable reading length, the reader can reflect before moving on to the next concept.

Use paragraph breaks to discipline yourself to develop fully each theme and step in an argument. Ideally, a paragraph should address just one separate and distinct idea or subject. If a sentence diverges from the idea or subject you are discussing, create a new paragraph.

Furthermore, when your paragraphs neatly dissect your argument into its component parts, the paragraph structure assists in conveying your ideas. The physical pattern of the paragraphs on the page reflects the organization of your arguments. Thus, you communicate with the paragraph structure, as well as with your words.

Long sentences also strain the legal reader. Most readers will need about one minute to read 200 words of ordinary prose, but they need over three minutes to read the same amount of legalese.² Although judges and lawyers may read faster than most people, show some consideration for the time they spend reading and deciphering your writing.

Do not strain your readers' patience by requiring them to keep track of several concepts simultaneously. As with paragraphs, each sentence should focus on one main idea.

Finally, do not carry this advice to an absurd extreme. Avoid writing that goosesteps across the page in a perfectly uniform, choppy staccato. While an average typed page might be broken into from three to five paragraphs, and an average sentence length might be below twenty-five words,³ remember that these numbers are merely averages, not mandates. Variation in sentence and paragraph length will grow naturally out of the ideas to be conveyed. Furthermore, variety is recommended as a matter of style.

NOTES

1. Phelps, *Problems and Cases for Legal Writing* (Notre Dame, IN: NITA, 1990) at 23.

2. Flesch, *How to Write Plain English: A Book for Lawyers and Consumers* (1981) at 25.

3. Wydick, *Plain English for Lawyers* (Durham, NC: Carolina Academic Press, 1985) at 34.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.



K.K. DuVivier is an instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.