CONCISE IS NICE!
AN AID FOR WRITING CONCISELY

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A legal document that concisely conveys the same message in 10 pages is more useful than one that rambles on for 20 pages. But writing concisely does not mean hacking your document down to size. As you pursue concision, do not sacrifice important ideas or clarity of expression. You should strive to express important ideas in sufficient detail to ensure reader comprehension. Only then, trim the fat from your writing.

The following principles are designed to help you, the legal writer, produce a concise written product. Keep in mind that while this document provides many tips, it is not comprehensive.

To write concisely, you must control your writing style. Choosing a direct and lucid style generally prevents wordiness. However, writing a briefer document demands more than just a concise writing style. You can also control the pure magnitude of a document’s content though the scope and depth of analysis. This document does not cover scope and depth in detail, but you should be aware that early choices as to the scope of your analysis, i.e., also choosing relevant and less relevant topics, as well as the depth of your analysis, i.e., choosing to devote significant space to case facts and reasoning, dramatically affects the length of your written product.

I. Concision through Style

a) Use Concrete Language

Using concrete language instead of abstract language promotes concise writing. Abstract language refers to general and vague concepts, such as “truth,” “fairness,” and “kindness.” Abstract language often utilizes jargon and gets to the point only after

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passing several roundabouts. Concrete language is plain. But plain English need not be Dick-and-Jane language. Concrete language uses clear, direct statements that convey your meaning accurately.

Abstract: To excel in law school, you should consider working hard in the various assignments you receive and preparing your mind for the rigors of the law.

Concrete: To excel in law school, you must go to every class, do your reading, and take notes.

b) Focus on the Actor, the Action, and the Object with Active Verbs

When you use active instead of passive verbs, your writing becomes briefer and clearer. Using passive verbs promotes using wasted words. One way to remedy passive verbs use is to ask: “Who is doing what to whom in this sentence?” Then rewrite the sentence to focus on three key elements, the actor, the action, and the object of the action.

Not only do passive verbs add length, but they also divert attention from the most important position in the sentence—the beginning—where the reader wants to find the actor and the action.

Passive:  
- The brief was read by us.  
- The evidence was suppressed by the court.  
- The holding was reached by the court  
- The argument was presented by the plaintiff.  
- A complaint was filed by the union.  
- Our conclusion is supported by the legislative history.  
- It is possible for the court to modify the judgment.

Active:  
- We read the brief.  
- The court suppressed the evidence.  
- The court held.  
- The plaintiff argued.  
- The union filed a complaint.  
- The legislative history supports our conclusion.  
- The court can modify the judgment.
c) Use Verbs, Avoid Unnecessary Nominalizations

The law describes the real world, a world where people live, breathe, lie, cheat, steal, sue, and die. But lawyers tend not to use verbs to describe these actions. Lawyers use nominalizations.

A nominalization is just a verb that has been turned into a noun, for instance act becomes take action, assume becomes make assumptions, and conclude becomes draw conclusions. But as a writer uses more nominalizations surplus words start to gather. Cut out excess nominalizations, and you cut out surplus words.

Nominalizations can often be spotted by their endings:
• -al
• -ment
• -ant
• -ence
• -ion
• -ent
• -ancy
• -ency
• -ance
• -ity

Nominalization:                      Verb:
• The implementation of the plan     The team implemented the plan
  by the team was successful.          successfully.
• He made a discovery               He discovered the photoelectric
effect.                             effect.
• The agency conducted an investigation. The agency investigated.

d) Avoid Compound Constructions

Compound constructions use three or four words to do the work of one or two words. They suck the vigor from your writing. Lawyers tend to use compound constructions rather than plain English. In our attempt to write precisely, we become verbose.

Compound:                           Simple:
• at the point in time               then
• by means of                        by
• by reason of                       because of
• by virtue of                       by, under
• for the purpose of                 to
• for the reason that                because
e) **Avoid Word-Wasting Idioms**

These idioms contain superfluous language. While your audience may understand their meaning, superfluous language takes up space, adds little value, and detracts from more important language.

**Verbose:**
- the fact that she died
- he was aware of the fact that
- despite the fact that
- because of the fact that
- in some instances the parties can
- in many cases you will find
- that was a situation in which the court
- during the time that
- for the period of
- insofar as... is concerned
- there is no doubt but that
- the question
- this is a topic that
- until such time as

**Concise:**
- her death
- he knew
- although, even though
- because
- sometimes the parties can
- often you will find
- there the court
- during, while
- for
- (omit it and start with the subject)
- doubtless, no doubt
- whether, the question whether
- this topic
- until
Avoid Redundant Legalisms

Avoid using coupled synonyms, a pair or string of words with the same or nearly the same meaning. Not only does the use of a redundant synonym take up additional space in the sentence, but it also may confuse the reader. How is *null and void* different from simply *null*? As a legal audience we search for meaning in each word and phrase, but our search may be in vain if the author carelessly uses meaningless redundancy.

While some of these examples come to us as traditional legal phrases, they are nonetheless redundant. Do not be a slave to turgid and redundant phrases. Distinguish yourself as a lawyer among the scriveners. Beware, however, that redundancies can sometimes be terms of art (such as in a statute or contract) and cannot be deleted.

Examples of Common Redundant Synonyms in Legal Writing:

- alter or change
- last will and testament
- confessed and acknowledged
- made and entered into
- convey, transfer, and set over
- order and direct
- for and during the period
- peace and quiet
- force and effect
- rest, residue, and remainder
- free and clear
- save and except
- full and complete
- suffer or permit
- give, devise, and bequeath
- true and correct
- good and sufficient
- undertake and agree
g) **Catchall - Don’t Pontificate**

- Use a simple word when you feel compelled to use a fancy word:
  - “behavioral dynamics” → “behavior”
  - “predicated and initiated” → “decided”
  - “relative to” → “of”

- Avoid excessive case quotations:
  - Excessive quotation not only interrupts the flow of discourse, but also adds extra words. Paraphrasing of case quotations is often a good start to paring down a wordy document.

- Delete words that mean little or nothing
  - as to
  - clearly
  - in the process of
  - it is clear that
  - personal opinion
  - honest opinion
  - actually
  - to be sure

- Change negatives to affirmatives
  - Do not write in the negative → Write in the affirmative
  - not different → similar
  - not allow → prevent
  - not many → few
  - not include → omit

- Use short sentences
  - Concise legal writing explains complex ideas simply. Long sentences make writing hard to understand. We have all read long passages consisting of only a single sentence. These sentences are no more profound because they mash many ideas together. No, these long sentences, if anything, are less meaningful because they make reading a chore.
II. Principles in Action

1. Before


Though the wording of the statute requires exhaustion of the "the question presented" it is clear that Congress was not addressing the issue of exhaustion of claims as opposed to exhaustion of the entire case. In 1948 neither Congress nor this Court was likely to have been aware of the unique situation posed when a habeas petitioner would later combine exhausted and unexhausted claims in a single petition. At that time very few claims were cognizable on federal habeas review. See Stone v. Powell, 428 U.S. 465, 475-76 (1976). Until the decision in Fay v. Noia, federal courts would refuse to consider unexhausted claims where a state prisoner deliberately bypassed state procedures in order to seek federal habeas relief. Brown v. Allen, 344 U.S. 443, 485 (1953). Therefore, the statutory requirement that the "question" be presented to the state court was not intended to encourage piecemeal federal habeas review of mixed petitions and thereby relax the exhaustion requirement. To the contrary, Congress envisioned complete and total exhaustion of each and every claim.

1. After

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2. Before

The process of learning to write like a lawyer is sometimes cumbersome. Basically, the skills required are much different from those most law students in their first year of law school have. It sometimes seems like the student has to completely change his way of thinking about writing, and re-train his brain to cut out creativity for the sake of writing like a lawyer. It seems like grades depend more on factors that have nothing to do with the way that you write. It basically seems like the absence of opinion in legal writing, without authority, is difficult to grasp, and creates problems for the student.

While legal writing seems daunting at first, it becomes easier later. With practice and acclamation to the type of writing that lawyers do, you will start to understand more why lawyers write the way they do. Despite the fact that you might feel confused now, hopefully by next year sometime, you will feel more confident. Just think, everyone feels the same way you do, at first.

2. After

First year law students often find legal writing cumbersome. The skills required of a legal writer are much different than those employed by other professionals. Often, students’ initial impression is that they must forsake creativity for legalese. Similarly, grades depend more on factors unrelated to prose. Lastly, the absence of opinion in legal writing is often difficult for the legal writer to grasp.

While legal writing seems daunting at first, it becomes easier. With practice and experience comes confidence and understanding. Even though confusion dominates the first-year writing experience, practice leads to clarity. While all first year law students feel overwhelmed, eventually we all become comfortable with legal writing.