Writing for Your Audience

Clear and Concise Documents for Clients, Courts, and Colleagues

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Writing for Your Audience

- Concision: Eliminating Clutter from Your Sentences
- Clarity: Easing the Burden on Your Audience
- Organization: Effective Paragraphs through TREAC
- Advanced Strategies

Example

- Even experienced legal writers have problems with clarity and concision.
  - *Justice O'Connor -- What she said*:
- "Because the individualized assessment of the appropriateness of the death penalty is a moral inquiry into the culpability of the defendant, and not an emotional response to the mitigating evidence, I agree with the Court that an instruction informing the jury that they 'must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling' does not by itself violate the Eighth and Fourteenth Amendments to the United States Constitution."
- – *California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring)

Example – Revised

- When a jury assesses whether the death penalty is appropriate in individual cases, it must not respond to mitigating evidence emotionally but rather inquire into the defendant's moral culpability. I therefore agree with the majority: When a court informs a jury that it "must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling," the court has not violated the defendant's rights under the Eighth and Fourteenth Amendments.

Characteristics of good legal writing

- Audience-centered
- Practical
- Complicated in subject matter, but simple in explanation

- Good writing "is best understood as writing that helps . . . actors make decisions in the course of their professional duties."

- --Mark K. Osbeck, *What is "Good Legal Writing" and Why Does It Matter?*, 4 Drexel L. Rev. 417 (2012).

- Concision: Eliminating clutter from your sentences

Concision

- Focus for today:
  - Eliminate excessive glue words
  - Eliminate empty phrases
  - Avoid nominalizations
  - Simplify words

Concision

- Anti-clutter lesson #1: Eliminate unnecessary words
  - *"Unnecessary words"*: glue words used to excess, and empty phrases.

Working Words and Glue Words

- Working words are essential to the meaning of the sentence. They are usually nouns, verbs or adjectives.

- Glue words hold the working words together, but do not add meaning. These words are often prepositions, pronouns or articles.
  - Wydick

Working Words and Glue Words

- **Problem**: Proportion of glue words high = poorly constructed, wordy sentence
- **Solution**: Eliminate unnecessary glue words.

Glue Words

- Circle the glue words in this example:
- The order of the court granting summary judgment was error for the reason that it failed to take account of several instances of disputed and material facts.
- (27 words; ___ glue words)

Glue Words

- **The** order **of the** court granting summary judgment was error **for the** reason **that it** failed **to** take account **of** several instances **of** disputed **and** material facts.
- (27 words; **11** glue words)

Glue Words

- **The** court erred **in** granting summary judgment because **it** ignored several disputed material facts.
- (14 words; **3** glue words)

Exercise: Circle Glue Words

- In the event that there is a disclosure of confidential information by the Receiving Party, the Disclosing Party must be notified promptly by the Receiving Party for the purpose of seeking an appropriate protective order or taking any other action.
- (40 words)

Glue Words

- **In the event that there is** a disclosure **of** confidential information **by the** Receiving Party, **the** Disclosing Party must be notified promptly by **the** Receiving Party **for the purpose of** seeking **an** appropriate protective order or taking any other action. (40 words)

Glue Words

- **Revised**: If the Receiving party discloses confidential information, the Receiving Party must promptly notify the Disclosing Party to permit the Disclosing Party to seek a protective order or take any other action.
- (31 words; 6 glue words)

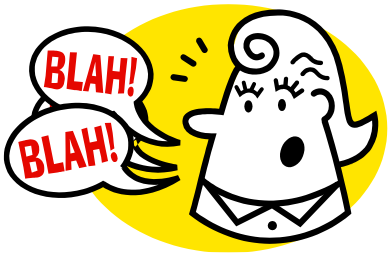
Eliminate Empty Phrases

- *"There is," "there are" and other empty phrases*
- **Problem**: "Empty phrases" use several words to do the work of one or two words. They do not add meaning to a sentence and should be removed or replaced with shorter, more meaningful phrases or words.

18
19
20

Eliminate Empty Phrases

Despite the fact that	**Although**
In some instances	**Sometimes**
For the duration of	**During**
He was aware of the fact that	**He knew**
At that point in time	**Then**
For the reason that	**Because**
It should be noted that	**[Omit]**



Eliminate Empty Phrases

- **There is/there are**: Often used as lead-ins to a sentence, “there is” and “there are” should be replaced by the real actor.

Eliminate Empty Phrases

- **Example**: There are three reasons that the employee fails to meet the city's residency requirement.

- **Revised**: The employee fails to meet the city's residency requirement for three reasons.

Exercise: Circle empty phrases and rewrite:

- In the event that there is a dispute regarding any Agency invoice, Client agrees to pay the undisputed amount and to withhold only the amount that is in dispute. (29 words)

Exercise: Circle empty phrases and rewrite:

- **In the event that there is** a dispute **regarding** any Agency invoice, Client agrees to pay the undisputed amount **and to withhold only the amount that is in dispute**. (29 words)

Revisions

- **Possible revision #1**: If the parties dispute any portion of an Agency invoice, Client agrees to pay the undisputed amount and withhold only the disputed portion. (23 words)

- **Possible revision #2**: If the parties dispute any portion of an Agency invoice, Client agrees to pay the undisputed amount. (17 words)

Anti-clutter lesson #2

- Do not turn verbs into nouns (*i.e.*, avoid nominalizations)

Avoid Nominalizations

- **Defined**: A nominalization is a verb that has been changed into a noun – usually an abstract noun that ends in **-tion**, **-sion**, **-ence**, **-ance** or **-ity**. Lawyers often rely on nominalizations instead of base verbs.

- Word search for endings

Avoid Nominalizations

- Thus, parties often:
  - Take action, rather than act
  - Make a decision, rather than decide
  - Reach agreement, rather than agree

Avoid Nominalizations

- **Problem**: Nominalizations slow the prose, inhibit the audience's understanding, and make sentences dull.

- **Solution**: Learn to spot verbs in noun clothing and turn them back into core verbs.

Avoid Nominalizations

- ***Exercise**: Change the nominalizations back to core verbs.*

came to a conclusion	**concluded**
bring an action against	**sue**
utilization of	_____
stating an objection	_____
take into consideration	_____

Avoid Nominalizations

came to a conclusion	**concluded**
bring an action against	**sue**
utilization of	**use**
stated an objection	**objected**
take into consideration	**consider**

Avoid Nominalizations

- Identify the nominalizations:

- Rejection of an insurance policy holder's facially valid claim is not an action that an insurance claims agent should undertake lightly.
- --Wydick

Avoid Nominalizations

- **Rejection** of an insurance policy holder's facially valid claim is not an **action** that an insurance claims agent should undertake lightly.

Avoid Nominalizations

- Revised

- An insurance claims agent should not lightly reject a policy holder's facially valid claim.

- --Wydick

Anti-clutter lesson #3

- Simplify your words

Simplify Words

- **Problem**: Professional writing is often full of puffed-up language and jargon.

- **Solution**: Fight the urge to sound like a lawyer. Use straightforward, simple words with fewer syllables and letters.

- From Rococo…

- To Minimalism…

- Ludwig Mies van der Rohe (1886-1969)
- “Less is more.”

Simplify Words

***Instead of*:**	***Use*:**
Commenced	began
Concerning	about
Endeavor	try
Instrument	document
Promulgate	issue, publish
Prior to	before
Subsequent	after
Utilize	use

Simplify Words

- *Exercise: Circle the puffed-up words and phrases in this example:*

- The capability to reformulate a product from information imparted to the public by the original developer can eliminate the validity of a trade secret.
- (24 words)

Simplify Words

- The **capability** to **reformulate** a product from information **imparted** to the public by the **original developer** can **eliminate the validity** of a trade secret. (24 words)
- **Revised**: A product is not a trade secret if someone can easily recreate it using commonly known information. (17 words)

Simplify Words

- **Lawyerisms**: Lawyerisms are cumbersome, vague words and phrases that uniquely plague legal documents. Examples of lawyerisms include *hereinafter, hereto, hereby, aforementioned, and whereas*.

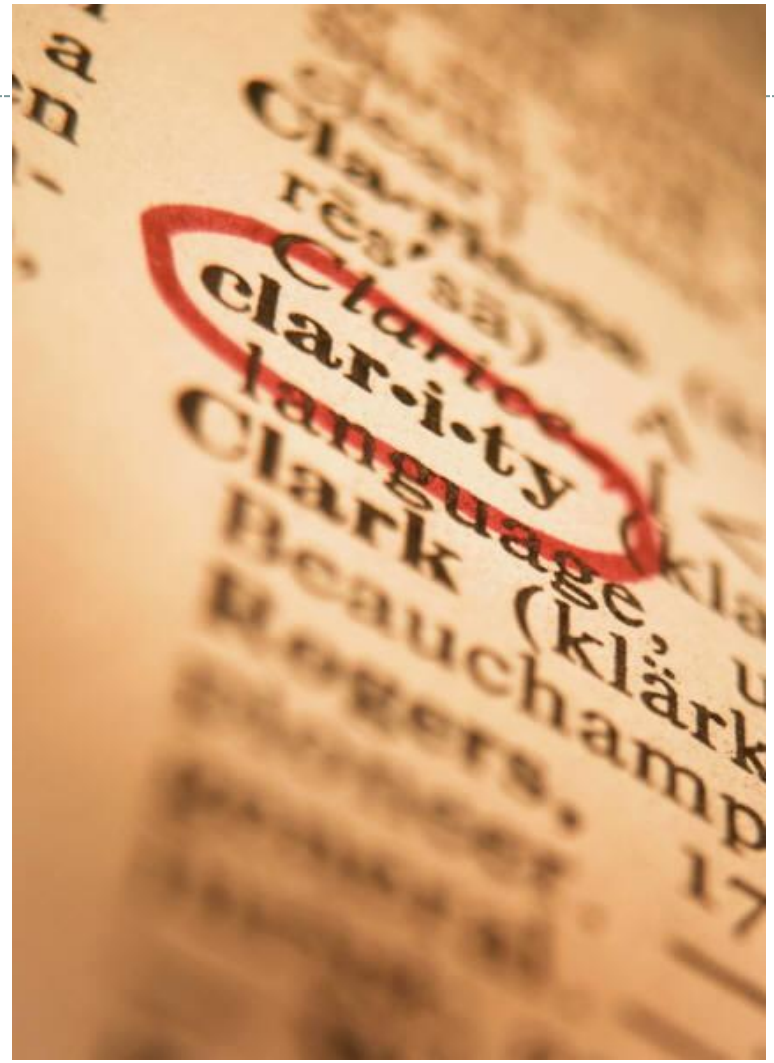
Simplify Words

- **Example:**
- Comes now ABC Corp., by and through its attorneys, and in support of its Motion to Dismiss the Complaint at Law brought by XYZ Corp., hereby states as follows: (29 words)

- **Translation**: In support of its motion to dismiss the Complaint, ABC Corp. states as follows: (14 words)

Simplify Words

- ***Exercise**: Rewrite the following excerpt to remove the lawyerisms.*
- Said defendant Database Systems Lab is hereinafter referred to as "DSL."
- **Possible revision**: Defendant Database Systems Lab (DSL) . . . .


clar-i-ty
language
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- Clarity: Easing the Burden on Your Audience

Clarity

- Favor subject-verb-object construction
- Choose words precisely
- Shorten sentences

Clarity lesson #1

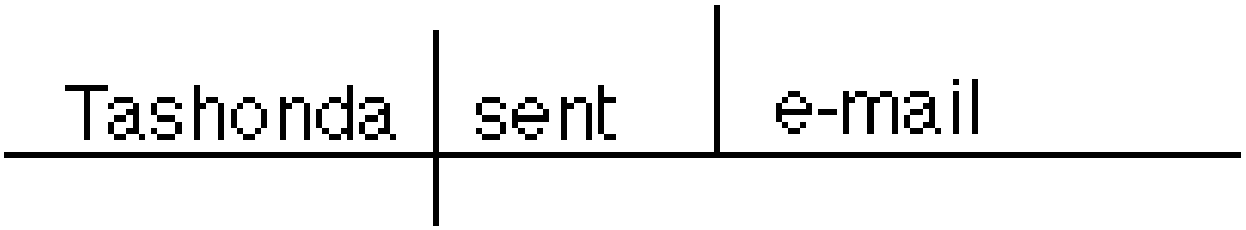
- Favor a subject-verb-object structure

Subject-Verb-Object

- *Keep subject, verb and object close together.*
- Writing is easiest to understand when it follows the typical English word order: subject-verb-object.

Subject-Verb-Object

- Tashonda sent e-mail.
-



  - http://grammar.ccc.commnet.edu/grammar/diagrams2/diagrams_frames.htm

Subject-Verb-Object

- **Problem**: When several words separate these core grammatical components, the reader has trouble understanding the sentence.
- **Solutions**:
- (1) Divide the sentence into two;
- (2) move the interrupting words to the end of the sentence.

Subject-Verb-Object

Where are the subject, verb, and object in this example?

A building contractor, after complying with a property owner's request to make a significant deviation from the plans previously agreed upon, may impose a reasonable additional charge for the deviation.

-- Wydick

Subject-Verb-Object

A building contractor, after complying with a property owner's request to make a significant deviation from the plans previously agreed upon, may impose a reasonable additional charge for the deviation.

-- Wydick

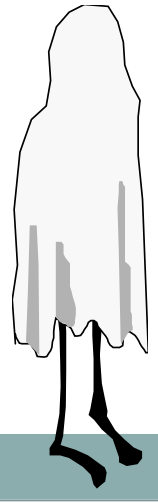
Subject-Verb-Object

- A building contractor may impose a reasonable additional charge for complying with a property owner's request to make a significant deviation from the plans previously agreed upon.

- Sometimes a property owner asks the building contractor to deviate significantly from the plans previously agreed upon. The building contractor may charge a reasonable amount extra for the deviation.
- --Wydick

Avoid Passive Voice

- *Eliminate the passive voice (in most cases)*
  - **Defined**: In active-voice sentences, the subject performs the action. In passive-voice sentences, the subject receives the action.



Avoid Passive Voice

- Examples:
  - “Billy threw the ball.” [ACTIVE] vs. “The ball was thrown by Billy.” [PASSIVE]
  - “The defendant filed the motion.” [ACTIVE] vs. “The motion was filed by the defendant.” [PASSIVE]

- “The active voice is usually more direct and vigorous than the passive: I shall always remember my first visit to Boston.

- This is much better than: My first visit to Boston will always be remembered by me.”

- --Strunk & White, *The Elements of Style*

Avoid Passive Voice

- **Solution**: Change to active voice. Make sure your sentence shows who is doing what.

Avoid Passive Voice

- ***Identify the passive voice in this example and revise:***

After 180 days, this Agreement can be terminated by either party.

--Wydick

Avoid Passive Voice

- ***Passive voice changed to active voice:***

After 180 days, either party can terminate this Agreement.

--Wydick

Avoid Passive Voice

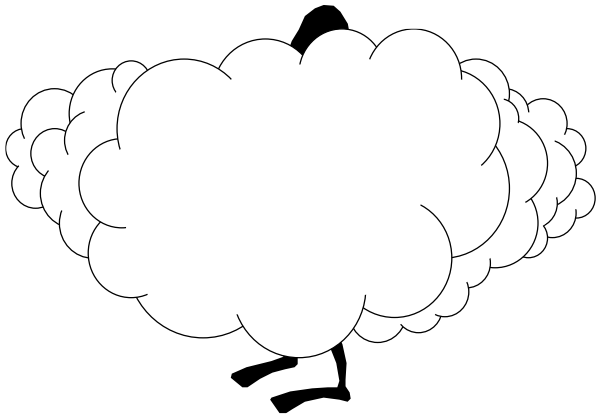
- ***Identify the passive voice in this example and revise:***
- First, it must be established that the company's software is the type of “information” covered by the statute.

Avoid Passive Voice

- ***Passive voice changed to active voice:***
- First, the company must show its software meets the statute's definition of "information."

When you might use passive voice . . .

- **Exceptions**:
- (1) where the actor is unimportant;
- (2) where the actor is unknown;
- (3) to minimize unfavorable facts.



When you might use passive voice…

- The subpoena was served on January 19.
- The data files were mysteriously destroyed.
- The plaintiff's teeth were knocked out.
  - Wydick

Clarity Lesson # 2

- *Prefer concrete subjects*

Concrete Subjects

- **Problem**: A concrete subject is a real person or thing that your audience can visualize, while an abstract subject is an intangible concept or idea. When a writer begins a sentence with an abstract subject, she hides who is doing what.
- **Solution**: Put a tangible "who" or "what" in the subject position.

Concrete Subjects

- Increased production speed by the new conveyor belt is a competitive advantage that produced economic value for the company.

- **Revised using concrete subject**: The company's new conveyor belt increased production speed and gave plaintiff an economically valuable competitive edge.

Concrete Subjects

- *Circle the abstract subject.*

- In these cases, support for a charitable intent was shown in the donations of the testator to several charities.
- In these cases, **support** for a charitable intent was shown in the donations of the testator to several charities.

Concrete Subjects

- **Possible revision**: In these cases, the testators showed charitable intent by donating to several charities.

Clarity lesson #2

- Be precise in your word choice

Precise Word Choice

appraise	apprise
[to value]	**[inform]**
averse	adverse
[negative reaction]	**[opposing]**
contest	contend
[challenge]	**[argue, allege]**
disinterested	uninterested
found	held
means	includes
principle	principal
regardless	irregardless

Precise Word Choice

disinterested	uninterested
[impartial]	**[bored]**
found	held
[facts]	**[law applied to facts]**
means	includes
[meaning complete]	**[part of meaning expressed]**
principle	principal
[tenet]	**[main or person]**
regardless	irregardless
[a word]	**[non-standard English]**

Precise Word Choice

- ***Exercise**: Circle the poor word choice and suggest alternatives.*

- The firm executed several steps to keep its software a trade secret.
- The following details of the employee are significant.

Precise Word Choice

- The firm **executed** several steps to keep its software a trade secret. **[took]**

- The following **details** of the employee are significant. **[characteristics, life]**

Clarity lesson #3

- Shorten your sentences

Shorten Sentences

- **Problem**: Lengthy sentences usually merge several different ideas, confuse logical relationships, and strain the reader's memory.
- **Solution**: Keep most of your sentences to 25 words or less, and limit most to one main idea.
- [*See* KDN article, "Sentences: Short and Sweet"]

Shorten Sentences

What's a good average sentence length? The experts say between 20 and 25 words:

- below 25—Wydick, *Plain English for Lawyers*, at 36.
- about 22—Enquist & Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer*, at 85.
- about 20—Garner, *Legal Writing in Plain English*, at 19.

Sentence length—measuring

You can program Microsoft Word (365) to tell you your average sentence length. Go here:

- File > Options > Proofing > When correcting spelling and grammar in Word

Then check the box for “show readability statistics.”

- After running a spelling and grammar check, Word will display a “Readability Statistics” box.

Shorten sentences

The woman brought two glasses of beer and two felt pads. She put the felt pads and the beer glass on the table and looked at the man and the girl. The girl was looking off at the line of hills. They were white in the sun and the country was brown and dry.

"They look like white elephants," she said.

(12.2 words/sentence avg.)

- -- Ernest Hemingway, "Hills Like White Elephants"

Shorten sentences

- Apart from the habit of exaggeration which they had from her, and from the implication (which was true) that she asked too many people to stay, and had to lodge some in the town, she could not bear incivility to her guests, to young men in particular, who were poor as church mice, “exceptionally able,” her husband said, his great admirers, and come there for a holiday.
- (66 words)
- Virginia Woolf, *To the Lighthouse*

Shorten Sentences

- **Example**: As we have already explained, although Dr. Kraus stated that Jeffrey's parents neglected Jeffrey's needs by not accepting all recommendations that medical and educational professionals gave them, they were not required to do so, and their reliance on their own opinions of what was best for Jeffrey did not compel a finding of neglect.

Shorten Sentences

- **Possible revision**:
- Jeffrey's parents did not neglect their son by deciding on their own what was best for him. Contrary to Dr. Kraus' assertion, they were not required to accept all the recommendations that medical and educational professionals gave them.

- Good legal writing is also:
  - Engaging
  - Elegant

    - Osbeck

- Engaging
  - Varied sentence structure
  - Voice
  - Ability to tell a compelling story
  - Pathos
  - Proper tone

    - Osbeck

- The animals were rounded up on the range and were either driven or hauled in trucks to a Government-owned or controlled corral 45 miles away. Horses which could not be so handled were shot and killed by the Government's agents on the spot.

- [T]he horses were so jammed together in the trucks that some died as a result, and in one instance, the leg of a horse that inconveniently protruded through the truck body was sawed off . . . .

  - Brief of Petitioners, *Hatahley v. United States*, 1956 WL 88923 at *8. [Petitioners prevailed in *Hatahley v. United States*, 351 U.S. 17376 (1956).

- Elegance
  - “Aesthetic quality”
  - Found in great briefs and judicial opinions
  - Is it necessary in good legal writing?

TREAC

- Organization
  - Effective paragraphs through "TREAC"
  - [*See* KDN article, "TREAC, the New IRAC – Or Why Organization Matters"]

- Analysis is a complex endeavor.

- TREAC is a variation on the IRAC (Issue, Rule, Application, Conclusion) used in law schools.

TREAC

- TREAC
- Topic sentence
- Rule
- Explanation
- Application
- Conclusion

TREAC

- Sample Issue [See KDN TREAC article]:
- Franchisee allegedly used racial insults against an African-American customer.
- Plaintiff has alleged, among other arguments, that an apparent agency relationship existed between the franchisor, Company ABC, and the franchisee, Joseph Smith. The author represents ABC.

TREAC

- **T – Topic Sentence**. A declarative sentence stating your conclusion on a given issue.

TREAC

- "There was no apparent agency relationship between Company ABC and Joseph Smith."
  - Tell the reader the conclusion in favor of ABC.
  - Don't bury the lede.

TREAC

- **R – Rule.** General rule, applicable regulation, or law.

TREAC

- "In order to establish apparent agency, the plaintiff must prove the following three elements: (1)… (2)…, and (3)…."[Case citation.]
  - One sentence long.
  - Direct quotation from a leading authority usually works well.

TREAC

- **E – Explanation.** Explanation of any decisions discussing rule, regulation, or law.
- Include case facts, holding, and reasoning.
- Conclude case discussion with a *synthesized rule*. This rule should refine or expand the general rule to reflect the finer points in the case law.

TREAC

- In the apparent agency hypothetical, a state supreme court decision held that mere use of the franchisor's products and logo did not create an agency relationship. This holding expanded upon the three general factors the court examined in order to find agency and was relevant to Company ABC's case.

TREAC

- **E – Explanation – con.**
- Common errors:
- Incomplete or misleading facts
- Inadequate discussion of the authority's reasoning
- Inadequate rule synthesis (more on this later)

TREAC

- **A – Application.**
- Apply the synthesized rule to your facts.
- Analogize to and distinguish from the applicable decisions. Compare facts from the decisions directly to the facts of your case.

TREAC

- **A – Application — con.**
- Common errors:
- Stating your situation is like case X without explaining why.
- Failure to include significant facts
- Including unimportant facts

TREAC

- **C – Conclusion**.
- Always come to a conclusion.
- State your conclusion clearly for the reader.
- Do not force reader to infer your conclusion from preceding discussion.
- Suggest action steps, if appropriate.

TREAC

- "No apparent agency relationship exists between Company ABC and Joseph Smith. Therefore, the Court should grant ABC's Motion for Summary Judgment."

TREAC

- Be flexible in applying TREAC, depending on the complexity of issues.

Advanced Strategies

- Advanced Strategies

Advanced Strategies

- **Writing the lede.**
- Omit preliminary information and draft introductory paragraph summarizing key issues.

Advanced Strategies

- **Steps in the editing process**. "Editing is as crucial to the final product as the draft itself[.]" – Goldstein & Lieberman

Advanced Strategies

- **Edit once for each of the following:**
- **Lede/Thesis paragraph**.
- **Conclusion**. Does your conclusion match the roadmap in your thesis paragraph?
- **Paragraph structure**. Did you follow TREAC?

Advanced Strategies

- **Transitions**. Did you include transition sentences between issues?
- **Proofreading.** Have you checked for typos, punctuation errors, and missing words? (Remember, simple mistakes may harm your credibility.)

Advanced Strategies

- **Concision**. Edit at both the macro and micro level. Is your writing concise in topics covered (macro)? At the sentence level (micro)?
- **Clarity**. Did you follow all the tips for clarity discussed earlier?
- **Citation**. Did you follow accepted rules of citation?
- **Checklists**. *See* J. Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press 2006).

Language Change

- Should we follow traditional grammar rules?
  - No split infinitives
  - Use “they” instead of “he or she”?

Write for your audience (?)

[*See* KDN article, "To Split or Not to Split"]

Language Change

- Generational shift
- Reflect fluid gender constructs
- Singular “they,” “ze,” “hir”
  - [*See* KDN article, “They and Ze: the Power of Pronouns”]

Document Design

- Document Design

- How a document looks is as important as what it says.
  - Gerald Lebovits

[*See* KDN article, "How Do I Look? Design Your Documents for Greater Legibility and Persuasion"]

- Reading [up to 1,000 pages per argument session] is a chore. Remembering it is even harder. You can improve your chances by making your briefs typographically superior. It won't make your arguments better, but it will ensure that judges grasp and retain your points with less struggle. That's a valuable advantage, which you should seize.

Practitioner's Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit

Document Design

- Document design isn't only about including visuals -- charts, diagrams, exhibits, graphics, maps, photographs, and the like -- an aid all readers appreciate. Document design, or **typography**, refers to the visual component of a word: typeface, type size, white space, margins, alignment, horizontal and vertical spacing, headings, footnotes, endnotes, superscript, straight and curly quotes, boldface, italics, and underlining.
  - Gerald Lebovits

Document Design

- Without effective, legible typography, the reader won't appreciate a document's content. When you have a choice, make the document accessible, comprehensible, persuasive, and professional.
  - Gerald Lebovits

Document Design

- Typeface (Font choice)
  - Monospace or proportional
  - Serif or sans serif

- Justification of text
- Left, right, or centered?

How a document looks is as important as what it says. Without effective, legible typography, the reader won't appreciate a document's content. When you have a choice, make the document accessible, comprehensible, persuasive, and professional.	How a document looks is as important as what it says. Without effective, legible typography, the reader won't appreciate a document's content. When you have a choice, make the document accessible, comprehensible, persuasive, and professional.	How a document looks is as important as what it says. Without effective, legible typography, the reader won't appreciate a document's content. When you have a choice, make the document accessible, comprehensible, persuasive, and professional.

Document Design

- To maximize **white space**:
- • Use 1.25-inch margins;
- • Avoid long paragraphs;
- • Add headings and subheadings;
- • Add a line between sections;
- • Use bullet points and numbered lists;
- • Use left-justified (right-ragged) margins;
- • Avoid block quotations and lengthy footnotes or endnotes

- **Is writing well worth the effort?**

- [*See* KDN article, “Is Good Writing Worth the Effort? Ask John Roberts”]

- Improves one's chance at professional advancement

- Good writing by supervisors promote better writing at lower levels

- "[Y]our brief writing conveys not only your argument to the court, but it also conveys a sense of your credibility and the care with which you put together your case."
  - David G. Leitch, former colleague of then-Supreme Court nominee, John Roberts, describing Roberts' views on writing. *New York Times,* Aug. 29, 2005.

Summary

- Summing it up… Today you learned about:

- Writing concisely
  - Eliminate empty phrases
  - Avoid nominalizations
  - Simplify words

Summary

- Writing clearly
  - Favor subject-verb-object construction
  - Choose words precisely
  - Shorten sentences

Summary

- Clear organization with TREAC
- Advanced editing
- Language change
- Document design

Summary

- And…

Yes, writing well is worth the effort!

- **For More Information**
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ANY QUESTIONS?