E-Prime, Briefly:

A Lawyer Writes in E-Prime

By Christopher G. Wren

I work as a lawyer. That means I work as a professional communicator. More precisely, I work as an appellate lawyer. That means I do most of my professional communicating in writing, mainly in documents filed in court.

Lawyers typically do not characterize themselves as professional communicators. Lawyers, however, spend an enormous percentage of their time writing or speaking to or on behalf of their clients. Because of that fact of professional life, most lawyers (contrary to the popular view) actually understand the importance of well-developed communication skills in getting their work done efficiently and effectively. If distilled and articulated, that understanding would embrace this view: "My clients have problems, and my clients want me to solve those problems. I use my communication skills to help me understand those problems, to help my clients better understand those problems, to help others understand my clients' problems, and ultimately to help my clients solve their problems."

Still, even though individual lawyers recognize the importance of those skills, lawyers as a class seem immune to improving them, especially written-communication skills. Lawyers, of course, have a reputation for writing poorly. Mostly, we deserve the rap. Crummy writing pervades the profession—in simple letters to clients, in contracts, in court briefs, in judicial opinions. None of us intends to write poorly, but the examples we see in our daily practices reinforce bad writing. Perhaps most importantly, these examples imply that bad writing does not carry with it any significant professional stigma.

Despite these discouraging influences (or maybe because of them), some lawyers consciously seek to improve their written-communication skills. We can find support in various law-oriented organizations, such as Scribes[1] and Clarity,[2] that focus on the profession's need for sound written communication and that publish journals designed, at least in part, to help lawyers write better. Mostly, though, lawyers who seek to improve their writing skills must do so on their own, treating each writing assignment as an opportunity for improvement.

That brings me to the purpose of this article: calling attention to a little-known writing technique I believe improved my legal writing. In late 1999, for the first time, I wrote an appellate brief in E-Prime. For those not familiar with E-Prime, the term refers to a subset of English that shuns any form of the verb "to be." According to David Bourland, credited with inventing E-Prime,[3] "[t]he name comes from the equation E' = E – e, where *E* represents the words of the English language, and e represents the inflected forms of 'to be.'"[4]

I first encountered E-Prime in 1992 in one of Cullen Murphy's columns in *The Atlantic Monthly*.[5] Initially, eliminating "to be" from my writing struck me as unworkable and as, probably, an overly time-consuming task. For several reasons, though, the idea appealed to me. Foremost, the passive voice, epitomized by forms of "to be," usually bores me as a reader, and I did not

Consider these before-and-after examples:

Before: Doe's assertion that he was prejudiced by the joint trial is without merit.

After E-Prime: Doe's assertion that the joint trial prejudiced him lacks merit.

Before: Generally, an order denying a motion for reconsideration is not an appealable order where the only issues raised by the motion were disposed of by the original judgment or order.

After E-Prime: Generally, the party moving for reconsideration may not appeal an order denying the motion if the original judgment or order disposed of the only issues raised by the motion.

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want to write materials—even legal briefs—that bored me or my readers. In addition, by the time I read Murphy's article, my wife and I had written two editions of a textbook on legal research, had written a couple of fairly lengthy articles for a professional journal, and had written a substantial portion of another book (on computer-assisted legal research). The more we wrote, the more we found ourselves consciously attempting to minimize passive constructions; E-Prime looked like a useful extension of that progression. Finally, as a lawyer, I did not want to write like most lawyers (or judges), whose writing typically makes heavy use of forms of "to be."

Despite my interest in E-Prime as a writing technique, the obstacles seemed daunting. According to Cullen Murphy, when Bourland wrote his original article about E-Prime, the experience left him with "'an intermittent, but severe, headache which lasted for about a week.'"[6] Because English-language communication relies so heavily on "to be" constructions, removing them from the written form struck me as requiring more time and dedication than I thought I could muster, then or in the foreseeable future. So, I mentally parked the idea and left it hibernating for several years.

In August 1999, after serving a stint as a government lawyer at the county level, I returned to the Wisconsin Department of Justice as an assistant attorney general in the criminal appeals unit. With my return to appellate litigation, I began considering more systematically how I might improve my writing. E-Prime awoke and presented itself again, and I decided to use this opportunity to find out whether the technique would work.

I did not immediately adopt the technique wholesale; for me, dropping "to be" took some easing into. But within a few weeks, I had written a complete brief in E-Prime: except for quotations that contained "to be" in some form, I had eliminated "to be" from my brief. Since then, I have routinely written my briefs in E-Prime.

I think E-Prime helped me improve my writing. In particular, I think E-Prime made my writing clearer by forcing me to pay more attention than usual to ensuring the reader will not have to guess who did what to whom. Eliminating "to be" made me more aware of sources of ambiguity and rhetorical flabbiness, such as the indefinite or ambiguous "it" that maintains a weed-like presence in much writing, including legal writing.[7] Ultimately, I believe E-Prime made my writing more inviting to read because a writing style with a less passive voice tends to encourage the reader to keep reading—something I certainly want the appellate judges to do. I don't know that I can demonstrate an improvement in any quantitative way; perhaps the judges and lawyers who read my briefs would even disagree that my writing has improved. But after comparing briefs I wrote before adopting E-Prime and the briefs I've written since, I sense that my writing works better now than it did then.

I drew several lessons from making the transition to E-Prime, and they might prove helpful to someone wondering whether to make a similar shift.

First, developing an E-Prime writing style doesn't have to take a lot of time, nor need it prove as painful as the experience did for Bourland. In my case, an inclination toward minimizing passive-voice constructions probably helped; shifting to an E-Prime style felt more like sculpting my existing style than blasting it apart. But even for those who never thought much about how passive constructions can affect a writing style and a reader's interest, I think the transition can, with a bit of discipline, take place in just a matter of weeks.

Second, E-Prime can yield noticeable improvements in the clarity of writing. In general, I think using E-Prime has reduced the length of my sentences. The reduction occurs, I believe, because E-Prime first leads an author to write in a more active voice. In turn, the more active voice induces a writer to minimize the number of words conveying the action. Facing fewer words in a sentence, the reader spends less effort

untangling the sentence to figure out its meaning. Hence, greater clarity.

But even for writers whose styles tend toward long sentences, E-Prime can improve the clarity of those sentences. E-Prime encourages the writer to focus on and remove ambiguity, a pursuit that sharpens the communication. Consequently, longer sentences written in E-Prime don't require as much untangling as sentences of comparable length written in standard English. As a result, the length of the E-Prime sentence recedes in significance as a factor causing ambiguity. E-Prime thus allows a writer greater flexibility to create relatively complex sentences that remain clear and don't lose the reader because of their length.

Third, E-Prime does not cure all writing defects. In the end, a writer using E-Prime still needs a sound grasp of the things that make good writing work: a message worth communicating, a sensible organization for the piece, adherence to generally accepted principles of grammar and syntax, an understanding of the target audience, proper spelling, and so on. E-Prime complements these elements of good writing, building on whatever foundation of writing skills already exists; the stronger the foundation, the better E-Prime will serve the writer and the reader.

Yet even a writer who lacks strong writing skills can still benefit from experimenting with E-Prime. The effort to write in E-Prime can bring writing weaknesses into focus; for a writer seeking to build sound writing skills, identifying weaknesses begins the journey toward improvement. For example, E-Prime draws the writer's attention to issues of agency and causation—who did what to whom. This focus, in turn, leads a writer to select words that accurately and actively convey agency and causation. This dynamic also guides the writer to consider more critically the structure of a piece, leading in turn to greater care in arranging sentences and paragraphs to keep the structure intact.

Fourth, E-Prime helps me analyze and better understand others' writings. When I read a court decision or another lawyer's brief, I often find myself mentally rewriting passages in E-Prime. This exercise—which now occurs almost effortlessly—can clarify for me the point the writer wants to make, and can confirm whether the writer even has a point.

Fifth, although I regard E-Prime as a useful technique for writing legal briefs, I don't use E-Prime for everything I write; I don't regard myself as a hardcore adherent.[8] In some settings, E-Prime strikes me as not yielding any significant benefit. When corresponding with friends in short notes or e-mail (to take two examples), I don't try to write in E-Prime. Rather, I tend to scale my use: the more formal or substantive the writing, the more I write in E-Prime; the less formal or substantive, the less in E-Prime.

In addition, I doubt E-Prime works well for some kinds of writing. Poetry strikes me as an unlikely candidate for an exclusively E-Prime writing style.[9] Moreover, I have difficulty imagining some expressions recast in E-Prime:

- "To be or not to be" (Shakespeare)
- "I think, therefore I am" (Descartes)
- "And that's the way it is" (Walter Cronkite)
- "Sean Connery *is* James Bond" (movie advertising)
- "And that's the truth" (Edith Ann, a Lily Tomlin character)
- "It depends on what your definition of 'is' is" (President Bill Clinton)

These examples would likely lose much of their impact if converted to E-Prime. "Sean Connery performs as James Bond"? Doesn't work for me.

Much legal writing, however, would benefit from a dose of E-Prime. Legal briefs, contracts, judicial opinions, statutes, administrative rules and regulations, jury instructions, prospectuses—all would serve their purposes better, I believe, if their authors tried the E-Prime route to clarity. In a society that prides itself on the rule of law and insists on public adherence to legal rules, a little headache seems a minimal price to pay for making legal writing clearer. ■

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FOOTNOTES

1. <http://www.scribes.org> (accessed June 13, 2007).
2. <http://www.clarity-international.net> (accessed June 13, 2007).
3. Murphy, *"To be" in their bonnets: A matter of semantics,* The Atlantic Monthly, February 1992, p 18, available at <http://www.theatlantic.com/issues/92feb/murphy.htm> (subscription required) (accessed June 13, 2007) and reprinted in Johnston, Bourland & Klein, eds, *More E-Prime: To Be or Not II* (Concord, CA: Int'l Society for General Semantics, 1994), p 28 [*E-Prime II*].
4. Bourland, *To be or not to be: E-Prime as a tool for critical thinking,* 46 ETC. 202 (1989), available at <http://learn-gs.org/library/etc/46-3-bourland.pdf> (accessed June 13, 2007) and reprinted in Bourland & Johnston, eds, *To Be or Not: An E-Prime Anthology* (San Francisco: Int'l Society for General Semantics, 1994), p 101 [*E-Prime I*]. Bourland writes that "[c]ritical thinkers have struggled with the semantic consequences of the verb 'to be' for hundreds of years" (identifying Thomas Hobbes, Bertrand Russell, Alfred North Whitehead, and George Santayana as among those who have wrestled with the verb). Bourland, *supra,* p 204.

   E-Prime allows the use of "to be" in a small number of situations—for example, in quoting someone or in illustrating a difference between E-Prime and standard English.
5. Murphy, n 2, *supra.*
6. *Id.*, p 28.
7. E-Prime alone does not automatically eliminate ambiguity. For example, changing "mistakes were made" to "mistakes happened" does not get the writer (or reader) any closer to identifying the person who committed the mistakes. To eliminate ambiguity, a writer must actively seek out ambiguities and get rid of them. In my experience, though, E-Prime makes that task easier.
8. E-Prime has generated—and will undoubtedly continue to generate—significant disagreement about its utility. For anyone interested in an array of opinions about E-Prime, the Institute of General Semantics <http://www.generalsemantics.org> publishes three anthologies of articles about E-Prime: *E-Prime I,* n 4, *supra*; *E-Prime II,* n 3, *supra*; and Bourland & Johnston, eds., *E-Prime III! A Third Anthology* (Concord, CA: Int'l Society for General Semantics, 1997). For an example of ambivalence about E-Prime, see Low, *E-Prime—A Layman's Personal Perspective* <http://www.ctlow.ca/E-Prime/E-Prime.html> (accessed June 13, 2007).
9. But see Kaparo, *Poetry and E-Prime: Some Preliminary Thoughts,* in *E-Prime II,* n 3, *supra,* p 85.