

A Dozen Words and Phrases to Doubt

By Ross Guberman

A few tweaks at the word level can liven up your style and lighten the reader's load.

To see how it works, let's match wits with some of the world's best judicial writers below. Or is that "match wits with regard to certain of the world's most illustrious judicial draftspersons *infra*"?

The Rules of Engagement: If a word or phrase is bolded in the first part of each set, the big guns didn't write it. For each of those terms, think of a lighter or shorter replacement before you peek below.

Here are a dozen of the most fruitful changes, before-and-after style:

1. **Just Say No:** *with respect to, with regard to, in regard to, regarding, as regards, and concerning.*

Mystery Judge

Yet the advice from the Supreme Court regarding how to deal with our situation seems scarcely more harmonious than the advice from the legislature.

Try on, about, for, as for, or as to.

Seventh Circuit Judge

Frank Easterbrook, *In re Sinclair*

Yet the advice from the Supreme Court about how to deal with our situation seems

scarcely more harmonious than the advice from the legislature.

2. **Just Say No:** *moreover, further, furthermore, and additionally.*

Mystery Judge

[A] growing number of judges in this Court have lately referred to international legal materials. That development is inevitable. It is, moreover, desirable, natural and legally correct.

Mystery Judge

Although he was a well-known local figure and candidate for public office, he was arrested during the campaign and beaten by the police, ostensibly for not having identification papers on him. Additionally, he received threatening phone calls, which he believed came from the police.

Mystery Judge

On the other hand, any loss of income attributable to Hubbard's being denied the job, like any emotional distress or harm to reputation that he may have suffered as well, is a consequence of the denial of the offer of employment. Furthermore, the classic remedy for that loss is money damages.

Try also or and.

Former High Court of Australia

Justice Michael Kirby, *Wurridjal v Commonwealth*

[A] growing number of judges in this Court have lately referred to international

legal materials. That development is inevitable. It is also desirable, natural and legally correct.

Seventh Circuit Judge Richard Posner, *Cecaj v Gonzalez*

Although he was a well-known local figure and candidate for public office, he was arrested during the campaign and beaten by the police, ostensibly for not having identification papers on him. He also received threatening phone calls, which he believed came from the police.

Former D.C. Circuit Chief Judge Patricia Wald, *Hubbard v EPA*

On the other hand, any loss of income attributable to Hubbard's being denied the job, like any emotional distress or harm to reputation that he may have suffered as well, is a consequence of the denial of the offer of employment. And the classic remedy for that loss is money damages.

3. **Just Say No:** *even assuming arguendo, assuming arguendo, arguendo, and just even assuming.*

Mystery Judge

We conclude that the [Social Security Administration's] reading is better attuned to the statute's text and its design to benefit primarily those supported by the deceased wage earner in his or her lifetime. And even assuming arguendo that the SSA's long-standing interpretation is not the only reasonable one, it is at least a permissible

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A few tweaks at the word level can liven up your style and lighten the reader's load.

construction that garners the Court's respect under [Chevron].

Try even if.

Supreme Court Justice Ruth Bader Ginsburg, *Astrue v Capato*

We conclude that the [Social Security Administration's] reading is better attuned to the statute's text and its design to benefit primarily those supported by the deceased wage earner in his or her lifetime. And **even if** the SSA's longstanding interpretation is not the only reasonable one, it is at least a permissible construction that garners the Court's respect under [Chevron].

4. **Just Say No:** is not required to.

Mystery Judge

[T]he public official **is not required to** specify the means that he will use to perform his end of the bargain.

Mystery Judge

In Chambers, the Eighth Circuit clarified that a plaintiff **is not required to** show more than de minimis injury in order to prevail on a claim of excessive force.

Try need not.

Chief Justice John Roberts, *McDonnell v United States*

[T]he public official **need not** specify the means that he will use to perform his end of the bargain.

District Court Judge Patrick Schiltz, *Newton v Walker*

In Chambers, the Eighth Circuit clarified that a plaintiff **need not** show more than de minimis injury in order to prevail on a claim of excessive force.

5. **Just Say No:** demonstrate and exemplify.

Mystery Judge

The examples **demonstrate** that the evidence may well be of great importance to getting at the truth and determining whether the accused is guilty or innocent under the law—the ultimate aim of the trial process.

Mystery Judge

The Home Secretary has adduced evidence, both open and secret, to **demonstrate** the existence of a threat of serious terrorist outrages.

Try show or prove.

**Supreme Court of Canada
Chief Justice Beverley McLachlin,
*The Queen v Seaboyer***

The examples **show** that the evidence may well be of great importance to getting at the truth and determining whether the accused is guilty or innocent under the law—the ultimate aim of the trial process.

**Former Law Lord of Appeal Hoffmann,
*A v Secretary of State for the Home
Department (dissenting)***

The Home Secretary has adduced evidence, both open and secret, to **show** the existence of a threat of serious terrorist outrages.

6. **Just Say No:** pursuant to.

Mystery Judge

The only case put before the judge or before us was that the keeper was strictly liable **pursuant to** the Animals Act 1971.

Try under.

**Former Master of the Rolls
Lord Denning, *Cummings v Granger***

The only case put before the judge or before us was that the keeper was strictly liable **under** the Animals Act 1971.

7. **Just Say No:** subsequent to and following.

Mystery Judge

Following the accident the plaintiff's handbag and shoe were found in the middle of the yard.

Mystery Judge

The Grateful Dead play rock music. Their style, often called "acid rock" because it mimics the effects some persons obtain **subsequent to** using LSD..., is attractive to acid-heads.

Try after.

**Former Master of the Rolls
Lord Denning, *Cummings v Granger***

After the accident the plaintiff's handbag and shoe were found in the middle of the yard.

**Seventh Circuit Judge
Frank Easterbrook,
*United States v Dumont***

The Grateful Dead play rock music. Their style, often called "acid rock" because it mimics the effects some persons

obtain **after** using LSD..., is attractive to acid-heads.

8. **Just Say No:** in the present case, in the instant case, in the case at bar, and even in this case.

Mystery Judge

The jury **in this case** was instructed that it could hold Westboro liable for intentional infliction of emotional distress based on a finding that Westboro's picketing was "outrageous."

Mystery Judge

Our taxpayer standing cases have declined to distinguish between appropriations and tax expenditures for a simple reason: **In the present case**, as in many contexts, the distinction is one in search of a difference.

Mystery Judge

Rarely has this Court rejected outright an interpretation of state law by a state high court. Fairfax's Devisee v. Hunter's Lessee, NAACP v. Alabama ex rel. Patterson, and Bouie v. City of Columbia, cited by the Chief Justice, are three such rare instances. But those cases are embedded in historical contexts hardly comparable to the situation **in the case at bar**.

Try here.

**Chief Justice John Roberts,
*Snyder v Phelps***

The jury **here** was instructed that it could hold Westboro liable for intentional infliction of emotional distress based on a finding that Westboro's picketing was "outrageous."

**Supreme Court Justice Elena Kagan,
*Arizona Christian School Tuition
Organization v Winn (dissenting)***

Our taxpayer standing cases have declined to distinguish between appropriations and tax expenditures for a simple reason: **Here**, as in many contexts, the distinction is one in search of a difference.

**Supreme Court Justice Ruth Bader
Ginsburg, *Bush v Gore (dissenting)***

Rarely has this Court rejected outright an interpretation of state law by a state high court. Fairfax's Devisee v. Hunter's Lessee, NAACP v. Alabama ex rel. Patterson, and Bouie v. City of Columbia, cited by the Chief

Justice, are three such rare instances. But those cases are embedded in historical contexts hardly comparable to the situation **here**.

9. **Just Say No:** therefore, consequently, and accordingly.

Mystery Judge

Therefore, her testimony contradicted John Ennis' testimony that he had never heard her say she was sorry and that he would not have fired her if she had.

Mystery Judge

[T]he content of the Ad includes political satire—it pokes fun at the Mayor's alleged penchant for taking credit for all of New York's achievements. The question, **therefore**, is whether the inclusion of political satire in the motif of the Ad removes it from the category of commercial speech in which it would otherwise clearly fall.

Mystery Judge

Consequently, back pay essentially pays the plaintiff for the economic losses suffered as a result of the employer's wrong; it does not return to the plaintiff anything which was rightfully his in the first place.

Try so, thus, or then.

Eleventh Circuit Chief Judge

Edward Carnes, *Hamilton v Southland Christian School*

So her testimony contradicted John Ennis' testimony that he had never heard her say she was sorry and that he would not have fired her if she had.

Former District Court Judge

Shira Scheindlin, *New York Magazine v Metropolitan Transit Authority*

[T]he content of the Ad includes political satire—it pokes fun at the Mayor's alleged penchant for taking credit for all of New York's achievements. The question, **then**, is whether the inclusion of political satire in the motif of the Ad removes it from the category of commercial speech in which it would otherwise clearly fall.

Former D.C. Circuit Chief Judge

Patricia Wald, *Hubbard v EPA*

Thus, back pay essentially pays the plaintiff for the economic losses suffered as a re-

sult of the employer's wrong; it does not return to the plaintiff anything which was rightfully his in the first place.

10. **Just Say No:** in order to.

Mystery Judge

[T]he agency may indeed exercise delegated legislative authority **in order to** overrule a judicial precedent in favor of the agency's preferred interpretation.

Mystery Judge

In order to be sanctionable, a misstatement or omission must be more than an innocent mistake; in making the misstatement or omission, the attorney must have been "culpably careless."

Try to.

Supreme Court Justice Neil Gorsuch, writing as a Tenth Circuit Judge, *Gutierrez-Brizuela v Lynch* (concurring)

[T]he agency may indeed exercise delegated legislative authority **to** overrule a judicial precedent in favor of the agency's preferred interpretation.

District Court Bankruptcy

Judge Benjamin Goldgar, *In re Brent*

To be sanctionable, a misstatement or omission must be more than an innocent

mistake; in making the misstatement or omission, the attorney must have been "culpably careless."

11. **Just Say No:** prior to.

Mystery Judge

This Court has generally insisted upon first analysing the impugned legislative language **prior to** determining a contested issue of constitutional validity.

Try before.

Former High Court of Australia Justice Michael Kirby, *Wurridjal v Commonwealth*

This Court has generally insisted upon first analysing the impugned legislative language **before** determining a contested issue of constitutional validity.

12. **Just Say No:** despite the fact that and notwithstanding the fact that.

Mystery Judge

Despite the fact that he was a well-known local figure and candidate for public office, he was arrested during the campaign and beaten by the police, ostensibly for not having identification papers on him.

A Not-So-New Contest

Let's try last month's contest again. The time frame may have been too short. (Beginning with the next new contest, I'll be adding a month to the time.) Try rewriting this sentence. Look to eliminate unnecessary prepositional phrases, but without changing the content.

Although the road traveled by Officer King was mostly rural in character, the county received the benefit of deterrence of traffic violations by virtue of the presence of the marked patrol vehicle.

Send an e-mail to kimblej@cooley.edu. The deadline is July 26. I have to be the sole judge of the winners.

People who have already sent a revision need not resend it.

For future reference: the online version of the column is usually posted before the print version is mailed. To get the jump, Google "Plain Language Column Index."

—JK

Try although or even though.

Seventh Circuit Judge Richard Posner, *Cecaj v Gonzalez*

Although he was a well-known local figure and candidate for public office, he was arrested during the campaign and beaten by the police, ostensibly for not having identification papers on him.

Finally, note the following handy cheat sheet to the right. ■

Ross Guberman is the president of Legal Writing Pro, the author of Point Made: How to Write Like the Nation's Top Advocates, and the creator of the new legal-editing app Brief Catch (www.BriefCatch.com).

| Just Say No | Try |
|--|-------------------------------|
| with respect to, with regard to, in regard to, regarding, as regards, concerning | on, about, for, as for, as to |
| moreover, further, furthermore, additionally | also, and |
| even assuming <i>arguendo</i> , assuming <i>arguendo</i> , <i>arguendo</i> , even assuming | even if |
| is not required to | need not |
| demonstrate, exemplify | show, prove |
| pursuant to | under |
| subsequent to, following | after |
| in the present case, in the instant case, in the case at bar, in this case | here |
| therefore, consequently, accordingly | so, thus, then |
| in order to | to |
| prior to | before |
| despite the fact that, notwithstanding the fact that | although, even though |

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