

# Plain Language

To speak effectively, plainly, and shortly, it becometh the gravity of the profession.

— Sir Edward Coke, 1600

## For Emphasis, Emphasize Verbs

By Henry Weihofen

Especially in presenting arguments, a lawyer will want to make the impact of his or her words strong and indelible. But not all efforts to that end are effective. Here are three that are not:

Ushering in a statement with a fanfare of bugles. Examples:

"Few if any of the issues in this case are of more vital importance than the question of whether. . . ."

"Another significant point that we wish to call to the court's attention is. . . ."

Such wordy introductions are little more than wind. Avoid them.

Using italics, bold-face type, underlining.

In speaking we can use certain devices to gain emphasis, such as pauses, gestures or raising the voice. These cannot be reproduced in type. But some writers try, using italics, bold-face, capital letters or underlining to mark the words they want to emphasize. This is artless and usually inept.

Using intensifiers.

Trying to strengthen a word or statement by adding an intensifying adjective or adverb, such as "very," "perfectly," "unthinkable," or "utterly," is not likely to prove effective. "Very" is the most overused of these. It is so shop-worn that it no longer packs any punch. When you find yourself using it, stop and ask yourself whether anything would be lost by deleting it. The answer will almost always be "no."

Adjectives and adverbs are indispensable parts of speech, and can lend character and color. They are useful and even indispensable when you want to characterize a thing — "a procedural point" — but not when you merely want to intensify the degree: "a very important point."

Instead of resorting to an intensifier if your noun does not seem strong enough, look for a stronger noun. If "accident" seems inadequate, don't try to strengthen it by calling it a "terrible" accident. Look for a stronger word: "disaster," "catastrophe," "tragedy." Other examples:

Instead of

Great malice

Great pain

Very strong

Grave error

Very evil

Say

Enmity, malevolence, malignancy, spitefulness, venom

Agony, anguish, torment

Potent, powerful, virile

Blunder, bungle, fault, lapse

Base, foul, ignoble, odious, vile

If the three devices discussed above are ineffective, what can a writer do to get more emphasis and forcefulness? Several things:

1. Rearrange the word order so that emphasis falls where it should. Bear in mind that the positions that carry the most emphasis within a sentence are (1) the end, and (2) the beginning. Therefore: put the word you most want to emphasize at the end.

Poor

He deliberately committed this crime.

This theory is unsound, we submit.

Better

He committed this crime deliberately.

This theory, we submit, is unsound.

Consider the following sentences. Which is worded more favorably for the prosecution, and which for the defense?

Although a search without a warrant is generally permissible if incident to a lawful arrest, if an arrest without a warrant is to support an incidental search, it must be made on probable cause.

Although to support an incidental search an arrest without a warrant must be made on probable cause, such a search without warrant made incidental to lawful arrest is generally permissible.

2. Prefer concrete to abstract terms. Some lawyers are so addicted to abstract words that they use them even for concrete things:

A variety of forms

A conflict of evidence

Unanimity of opinion

Various forms

Conflicting evidence

Unanimous opinion

3. Make assertions in affirmative form, not negative. Telling us that something is "not" only denies the existence of some thing or quality. It does not posit anything. Language

This is the ninth in a series of articles coordinated by the Plain English Committee of the State Bar of Michigan. The articles are written by groups and individuals interested in promoting plain language in the law. Anyone interested in submitting an article for publication should contact Mr. George H. Hathaway, Detroit Edison Co., 2000 Second Ave., 688 WCB, Detroit, MI 48226.

is more forceful when it posits or affirms something. Even negative ideas may be expressed in positive form and so gain greater forcefulness:

Did not give consideration to	Ignored
Did not remember	Forgot
Did not take care	Neglected
Not very often	Seldom
Does not have	Lacks

4. Use figures of speech — similes and metaphors. These enable us to say more in fewer words, and to say it with vitality and color.

The simile describes or illustrates one thing by saying it is like another:

If our Bill of Rights does not mean at least this much, then it is merely a teasing illusion, like a munificent bequest in a pauper's will.

Laws, like cobwebs, entangle the weak, but are broken by the strong.

A metaphor is stronger than a simile. It does not merely compare one thing with another; it identifies the two. Mr. Justice Holmes said that when he began, the law was "a ragbag of details." Even less complimentary was Dickens' Mr. Barkus, who complained that the law "is a ass, a idiot." in the same vein are other descriptions:

Law is a bottomless pit.  
Law is a machine which you go into as a pig and come out of as a sausage.

5. Use parallel construction and antithesis.

Arranging words, phrases, and sentences in groups of two or three often helps build up emotional effect. Lincoln could have said, "government of, by, and for the people," and said just as much as, "government of the people, by the people, and for the people." Three parallel phrases were unnecessary for his meaning, but highly conducive to deepening emotional reaction with each repetition. The same can be said of the well-known words of Lincoln's Second Inaugural Address: "With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right. . . ."

When parallel statements are opposed or in contrast, we have antithesis, the setting of one thing against another. Bring opposing ideas thus together puts them into bold relief and so makes more impact on the reader: To err is human; to forgive, divine.

6. Don't overuse nouns. Prefer verbs.

I want to enlarge upon this precept. One common characteristic of the stuffy, pompous style affected by many lawyers — and businessmen, educators, politicians and sociologists — is the use of a verb, a noun and a preposition when the verb alone would suffice.

Exhibits a tendency to	Tends
Make provision for	Provide
Comes into conflict with	Conflicts

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Using the verb alone not only makes writing more concise, it also makes it more vigorous and more forceful. The verb is the power plant of the sentence; it supplies the energy and the action.

Yet too often writers pass over the direct verb and reach for a ponderous noun derived from the verb. Instead of saying, "We have revised the traffic code," they say, "Revisions have been made in the traffic code." Instead of, "By distributing the case load better, we have markedly improved the court's operation," they say, "Better distribution of the case load has effected a marked improvement in the operation of the court." The verbs, "distribute" and "improve" are made into nouns, "distribution" and "improvement."

Such writers will say, "Improvement in the field of pest control was accomplished by the utilization of more effective insecticides." The only verb in that sentence is the weak "was accomplished." The real action words have been smothered and turned into polysyllabic nouns: "improvement" and "utilization." If we turn these words back into verbs, we get a stronger sentence: "Using more effective insecticides has improved our pest control program."

When I say, "Use verbs," I don't mean the colorless little auxiliary verbs like be, give, have, hold, make, and take, which seduce you into using nouns that derive from verbs and sap their strength. Use the direct verb itself: Not "It was the court's intention," but "The court intended."

<u>Instead of</u>	<u>Say</u>
Have knowledge of	Know
Held a meeting	Met
Is binding upon	Binds
Made the decision	Decided
Make a payment	Pay
Took notice	Noticed

Using these little auxiliary verbs leads you to turn real action verbs into limp nouns by adding endings like -ment, -ation, -ence, and -ency. Thus "examine" becomes "make an examination;" "act" becomes "take action," and "appear" becomes "make an appearance."

Linguistic authorities call this process nominalization. It is especially bad when it leads us to use abstract nouns expressing a concept, instead of words that tell what somebody did.

The general response was cynical laughter.  
The campus confrontations of the 60's have faded.  
There is a tendency to use

Such sentences have an eerie quality. They have no people in them, only abstractions. They also have no working verbs, only weak little verbs like "was," "have," "is." The working words are all abstract, impersonal nouns: Response, laughter, confrontations, tendency. Linguistic theory tells us that such nominalizations are harder for readers to process than their equivalent verb forms, for two reasons:

1. Verbs and verb phrases are more basic. Anything that makes a verb less like a verb and more like a noun creates abstraction. And abstract terms are vague.

2. Readers like personal references. But nominalization gives us only impersonal ones. When we are "just talking," we might say, "When you describe a thing, make sure. . . ."

But when we are writing law, we are likely to think that too informal. So we nominalize. We write, "Description of a thing should. . . ."

This takes the actor, the doer of the action, out of the picture, and leaves nobody, only an impersonal act without an actor. The reader finds this harder to visualize; his or her mind has to work harder to comprehend it.

So the writer ought to get life into such cold, dead sentences by putting people in. Get people doing things. Instead of, "The general response was cynical laughter," say, "Most people just laughed cynically." Instead of, "The campus confrontations of the 60's have faded," say, "Students today are not organizing protests or staging sit-in strikes." Instead of, "There is a tendency to use," say, "We tend to use."

That last sentence shows one way to get people into even abstract propositions: Use the word "we." Instead of saying "The American concept is," say, "We in America believe."

One form of verb we may neglect is the participle, the verb with the "ing" ending, which we use as a noun.

The depletion of the trust by the application of its assets to non-trust purposes constituted a breach of the trust.

Instead of "the depletion of," we could say "depleting;" an instead of "the application of," we could say "applying."

Depleting the trust by applying its assets to non-trust purposes constituted a breach of the trust.

The pronouncements of political personages are replete with neologisms such as "finalize," "personalize," and "prioritize." A former President said in a speech that a certain figure "would annualize at 7.2%." Later in the same speech he said, "We have to maximize our efforts" against crime. I urge you: cut down on izationism.

When I say to use verbs, I don't mean passive verbs. These are lazy verbs. They don't actively do anything. The active voice is more concise and more forceful. "The verbs you want to use," said Rudolf Flesch, "are those that are in the active business of doing verb work." If you find yourself writing a graceless passage such as, "A favorable atmosphere was hoped to be created," better recast it by identifying the actor, and starting your sentence with him as your subject: "The chairman hoped to create a favorable atmosphere."

We can all strengthen our writing style if we will cut down on nominalization, use more direct verbs, and prefer the active over the passive voice. ■

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from the **Michigan Supreme Court**

## In the Matter of the Appointment of a Committee to Develop a Probate Court Docket Tracking System

On order of the Court, the following persons are appointed to constitute a committee responsible for developing and recommending to the Court a docket tracking system for Probate Courts:

Honorable Y. Gladys Barsamian, Chairperson  
Honorable Michael J. Anderegg  
Honorable James S. Casey  
Honorable Tom H. Linck  
Honorable Richard N. Loughrin  
Honorable Donald S. Owens  
Honorable Elizabeth Ann Weaver  
Barbara Consilio, Oakland County Court Administrator  
Harold Dyer, Kalamazoo County Court Administrator  
Roger Likkell, Calhoun County Court Administrator  
Margaret Pleasant, Genesee County Probate Register  
John Davis, Judicial Data Center  
Roger Lewis, Michigan Department of Social Services  
Office of Children and Youth Services  
Lisa Kaichen, Children's Charter of the Courts of Michigan  
Ulysses Hammond, State Court Administrative Office  
J. Otis Davis, State Court Administrative Office

The Committee is hereby requested to provide this Court with a preliminary outline on or prior to April 1, 1985.

## Administrative Order 1985-3

On order of the Court, this Court having previously issued Administrative Order 1981-7 concerning regulations governing a system for appointment of appellate counsel for indigents in criminal cases and standards for indigent criminal appellate defense services and having indicated therein that a further administrative order would be ultimately forthcoming, Now therefore, on further consideration of this matter by the Court, it is hereby ordered that our prior approval of the standards for indigent criminal appellate defense services is affirmed. On the question of the regulations governing a system for appointment of appellate counsel for indigents in criminal cases, the Court is persuaded that 1978 PA 620 confides the development of such a system to the Appellate Defender Commission and not to this Court.