

# Plain Language in Transition

## Introduction

Critics of plain language acknowledge that eliminating legalese is a worthy goal, but often claim that such writing is mechanical and lifeless, a relentless procession of dull, declarative sentences. On the contrary, legal writing can be concise and clear, while also creating a sense of flow and interest that carries the reader through the text. As one of my mentors was fond of saying, the best legal writing can “sing.” Here are some transitional techniques that can make your writing concise and create flow.

## Get to the Point

Plain-language advocates generally say cut surplus and use uncomplicated sentence structure. The goal is to eliminate words that get in the way of clear communication and to let the reader get to your point. This is especially important at the start of sentences, when you move to new points. Thus, you should usually eliminate what legal-writing experts describe as “word wasting idioms,” “throat clearing” expressions, and “timid phrases,” such as *it should be noted that*, *the fact that*, *it seems*, or *it would appear that*.<sup>1</sup> And you should prefer simple, direct sentences with active, concrete verbs and nouns, and without long modifying phrases that interrupt your main subject and verb.

Yet if you follow these principles mechanically, they may produce a repetitive, staccato effect that bores or even slows the reader. For example, consider this paragraph:

Johnson and two others were sitting in his parked car. Two police officers approached. They had no grounds for an arrest or even a *Terry* stop. They ordered the three occupants to get out of the car. One of the officers searched under Johnson’s seat and found drugs there. The other officer searched the two passengers. He found drugs and counterfeit money on their persons. The officers searched the trunk. They found counterfeit money plus a color copier. Johnson con-

tends that the evidence seized in the trunk should not have been used against him. He argues that the police had no basis for seizing him and searching under his seat.

Obviously, plain-language advocates do not recommend this choppy, unvaried, and somewhat disjointed style.

Now consider this revision, with changes in italics:

Johnson and two others were sitting in his parked car *when* two police officers approached. *Without any* grounds for an arrest or even a *Terry* stop, the *officers* ordered the three occupants to get out of the car. *While* one of the officers searched under Johnson’s seat and found drugs there, the other officer searched the two passengers *and* found drugs and counterfeit money on their persons. The officers *then* searched the trunk *and* found *more* counterfeit money plus a color copier. Johnson contends that the evidence seized in the trunk should not have been used against him, *since* the police had no basis for seizing him and searching under his seat.<sup>2</sup>

Better? Of course. The new text is still concise—and the sentences average only 22 words<sup>3</sup>—but the writing moves the reader along and maintains interest. The author is Judge Richard A. Posner of the United States Court of Appeals for the Seventh Circuit, a prolific author and winner of the national 2005 Lexis-Nexis Distinguished Judicial Writ-

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“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. We seek to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain-English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at [kimblej@cooley.edu](mailto:kimblej@cooley.edu). For more information about plain English, see our website—[www.michbar.org/generalinfo/plainenglish/](http://www.michbar.org/generalinfo/plainenglish/).

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ing Award. What makes this text flow? It uses three fundamental transition devices: linking words, varied sentences, and repetition.

## Use Linking Words and Go with the Flow

The most basic technique to improve flow is to use linking or transitional words. You can simply add words such as *then*, *next*, *nevertheless*, *also*, *rather*, *therefore*, *but*, or *and* near the start of sentences, or use them to join sentences. These words not only link text, but they can introduce the purpose of the following phrase and show its relationship to the previous text. Professor Linda Edwards describes these purposes as addition, sequence, comparison, contrast, concession, illustration, result, summary, or emphasis.<sup>4</sup> For example, the text above uses the linking words *when*, *while*, and *then* to signal sequence. Of course, if they are overused, especially at the start of sentences, linking words can also produce an overrepetitive effect. But used judiciously, they are not surplus. Rather, they serve a useful purpose: creating interest and leading the reader from point to point.

## Vary Sentence Form to Maintain Interest

Another common technique to maintain the reader’s interest is to use sentences of different length and complexity. One way to do that is simply to combine some sentences using *and* or *but*. The example goes a step further. It creates more complex sentences with more variety and interest by placing linking words and phrases sometimes at the start and sometimes in the middle of sentences.

But doesn’t this use of complex sentences violate the plain-language rules of uncomplicated sentence structure? No, to sensible plain-language advocates there are no inflexible rules—only guidelines.<sup>5</sup> The guidelines need not be followed at points when a different approach better serves the writer and reader. You can always use a longer, more

complex sentence when it promotes overall flow. And a sentence with more than one point can still be direct and clear, so long as one point doesn't interrupt another.

### Leapfrog Along with Repetition and Overlapping

A third basic device to link text is deliberate repetition. This occurs naturally in fact narratives like the example, through repeated reference to the actors and subjects. There the actors and subjects are the officers, the searches, and the results of the searches.

A related technique to create links and avoid choppiness is repetition through what Professor Helene Shapo has called “overlapping”<sup>6</sup>—that is, repeating a term or concept from the preceding sentence before giving new points. The text overlaps, or “leapfrogs,” forward on the back of the prior sentence. For example, look at the following paragraph and the italicized overlapping phrases:

On December 31, 1984, the defendant surrendered to the Concord, New Hampshire,

police. *Later that day*, he made two tape-recorded statements to the New Hampshire and New York authorities. *During those interviews*, the defendant stated that he began carrying a gun illegally in New York in about 1981, shortly after he was injured during a mugging. On December 22, 1984, he was *carrying that gun* when he boarded the subway train at 14th Street, intending to meet some friends in lower Manhattan for a holiday drink.<sup>7</sup>

The overlaps tie each sentence to the prior sentence and carry the action and the reader's attention from point to point. Note that the overlapping references can be in various forms, placed either at the start of or within the next sentence. And again, this repetition is not surplus or redundancy because it helps the reader through the text.

### Conclusion

You can use plain language without being dull. Your writing can be direct and concise while still keeping the reader's attention and interest if, among other things, you use basic

transition techniques and create flow. Then, even if you can't always make your writing sing, you can at least make it hum along. ◆

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### FOOTNOTES

1. Richard C. Wydick, *Plain English for Lawyers* 14–16 (4th ed. 1998); Bryan A. Garner, *The Elements of Legal Style* 35, 55–56 (2d ed. 2002).
2. *US v Johnson*, 380 F3d 1013, 1014–15 (CA 7, 2004).
3. See Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 Scribes J. Legal Writing 1, 20 (2003–2004) (recommending 20 words as “an ideal average”).
4. Linda H. Edwards, *Legal Writing and Analysis* 271 (2003).
5. Joseph Kimble, *Answering the Critics of Plain Language*, 5 Scribes J. Legal Writing 51, 66 (1994–1995); Wydick, *supra* n 1, at 38.
6. Helene S. Shapo et al., *Writing and Analysis in the Law* 193 (rev. 4th ed. 2003).
7. Appellant's Brief in *People v Goetz*, 501 NYS2d 326 (NY App Div 1986).