In law school, I don't remember any professor telling us to "write like a lawyer." Maybe "think like a lawyer," but not write like one: take all strong verbs out of your sentences; make every sentence at least 200 words, with as many clauses as possible; have your paragraphs go on from page to page; use words and phrases such as pursuant to, whereas, heretofore, prior to, and provided that. And of course use two, and perhaps three or four, words when one would do: rest, residue, and remainder; free and clear; null and void.

None of these lawyerisms are necessary, and all are distracting and confusing—not only to the public, but also to judges and lawyers.

The problem is that we read cases by old dead judges who were not good writers when they were alive. Certainly, there were good judicial writers—Holmes, Cardozo, Jackson—but they did not write on every issue to be covered in a casebook. So the casebook editor had to pick dull cases. And even after editing, they were still badly written. So we read stilted, backward, and downright clumsy language that had been passed down for generations—and internalized it.

That's how judges and lawyers write, so I should write that way too. Thus, the tradition of bad legal writing continued.

Too Long Words

We tend to use a longer, more formal word, when a shorter one would do better: subsequent rather than after, pursuant to rather than under, provided rather than if.

Here, there, or where do not take any extra letters. Hereinafter, therein, whereas, wherein, and the like should be banned.

And we use phrases when one word would do: in possession of for possess; adequate number of for enough; make an examination of for examine. Always question these phrases: in order to is almost always just to, and by means of is by.

Too Many Words

It's not just long words—we use way too many words.

Has anyone ever come to your office seeking a will and testament? Are they two things? And did they then say, "I would like to give the rest of my estate to my spouse, the residue to my daughter, and the remainder to my son'? Would that be possible? Of course not—they are the same thing, so why do we use three words?

The same goes for null and void, goods and chattels, free and clear. These were couplets in Norman French and Old English.

The explanation of why we started doing this is too long for this article, but you can read a shorthand version in Kohlbrand v. Ranieri, 823 NE2d 76. It has something to do with the Norman Conquest—we have been doing this foolishness since shortly after 1066. It's time to stop. The rest of the estate is enough, as is clear title. If anyone tells you these words have different meanings, they are just wrong. (There are a few that are not couplets but separate issues: joint and several, for instance. They are the exception and are easy to spot.)

Redundancies

Many times we just write redundancies: a distance of five miles = five miles (five miles is a distance); a period of a week = a week (a week is a period).

Only write during the month of May if you have a poetic license and insert merry, merry before month.

Nominalizations

Do not write filed a motion unless the filing itself has some significance. Filed a motion conjures up in readers' minds someone

So we read stilted, backward, and downright clumsy language that had been passed down for generations—and internalized it.
walking up to the clerk’s counter and having a pile of papers stamped. Write moved. Smith moved for summary judgment.

Nominalization is taking a perfectly good verb, such as examine, and turning it into a noun, examination. Then you need a verb, which is always a weak one, in this case make. Make an examination of is four words, three of them useless.

These are some common nominalizations. See how many word you can save by turning them back into verbs. And you gain clarity.

<table>
<thead>
<tr>
<th>performed a search on</th>
<th>searched</th>
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<tbody>
<tr>
<td>provide responses</td>
<td>respond</td>
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<tr>
<td>offered testimony</td>
<td>testified</td>
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<tr>
<td>provide assistance</td>
<td>help</td>
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<tr>
<td>place a limitation</td>
<td>limit</td>
</tr>
<tr>
<td>make an examination</td>
<td>examine</td>
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<tr>
<td>provide protection to</td>
<td>protect</td>
</tr>
<tr>
<td>reach a resolution</td>
<td>resolve</td>
</tr>
<tr>
<td>reveal the identity</td>
<td>identify</td>
</tr>
<tr>
<td>makes mention of</td>
<td>mentions</td>
</tr>
<tr>
<td>make allegations</td>
<td>allege</td>
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<tr>
<td>was in conformity with</td>
<td>conformed</td>
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<tr>
<td>entered a contract to</td>
<td>contracted, agreed</td>
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<tr>
<td>filed a counterclaim</td>
<td>counterclaimed</td>
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<tr>
<td>filed a motion</td>
<td>moved</td>
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<tr>
<td>filed an application</td>
<td>applied</td>
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<tr>
<td>is in violation of</td>
<td>violates</td>
</tr>
<tr>
<td>made application</td>
<td>applied</td>
</tr>
<tr>
<td>made provision</td>
<td>provided</td>
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</tbody>
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The preposition of is sometimes a marker for nominalizations. Always question any of in your writing—they may mark not only nominalizations, but also false possessives.

Write Ohio Supreme Court, not Supreme Court of Ohio. There is nothing wrong with the possessive. Write the court’s docket, not the docket of the court. Recently I read upon motion of Harmon. Why not on Harmon’s motion? Somewhere, someone told lawyers not to use possessives, maybe because docket of the court sounds more formal. Or maybe we got confused by someone banning contractions from legal writing (another error) and the possessive apostrophe got unjustly maligned. Whatever the error’s genesis, the of construction is clutter. And much harder to read.

Examples of And and But

Holmes:
Courts proceed step by step. And we now have to consider whether the cautious statement in the former case marked the limit of the law . . . .
But to many people the superfluous is necessary, and it seems to me that Government does not go beyond its sphere in attempting to make life livable for them.

Jackson:
But we think the previous cases indicate clearly that respondents are within the Act.

Pound:
Hence it is an unjustifiable interference with a natural right. And this is exactly what the court said in an actual case.

Shakespeare:
But I am very sorry, good Horatio
That to Laertes I forgot myself;
For, by the image of my cause, I see
The portrait of his: I’ll court his favours.
But, sure, the bravery of his grief did put me
Into a towering passion.

Tom Wolfe:
He had grown up associating religion with the self-delusion and aimlessness of adults. But now he thought about the soul, his soul. Or he tried to. But it was only a word!

William Faulkner:
But it was not for him, not yet. The humility was there; he had learned that. And he could learn patience.

Isaac Asimov:
But it would be silly to wear clothes in the rain. You didn’t wear clothes in the shower. If it rained, you would take off your clothes. That would be the only thing that made sense.

But of Course Start Sentences with And and But

And do not be afraid to start sentences with and or but. This signifies good writing. The reason your grammar-school teacher told you not to start a sentence with and was because you wrote, I have a mother. And a father. And a dog. The last two weren’t sentences.

Use but rather than however to start a sentence, and see how much better it reads.

Almost any example of good writing pulled at random will contain numerous examples. The Wall Street Journal and The New York Times are well-written—look at the front page of either and circle the number of sentences beginning with and or but.

Pick up any work by a good writer, and you will find countless examples.

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