



A Breath of Fresh Air or...

# Spring Is in the Air: Breathe New Life into Your Legal Writing

By Jodi S. Green

**A**s Leo Tolstoy quipped, “Spring is the time of plans and projects.” Leo Tolstoy, *Anna Karenina* 1150 (World Classic Series ed. 2016). As legal writers, we are often bound by page limits and word counts. While some of us may struggle with page limitations, others—myself included—revel in brevity. Thankfully, writing concisely is not an art, but a science. While this may not be the sort of project that the famous author had in mind, this column offers five tips to achieve clear and concise legal writing.

**Employ active voice.** Writers disfavor passive voice, with limited exceptions, such as when the focus is on the recipient of the action. Grammatically speaking, passive voice is a construction using a be-verb form and a past-participle verb ending in “ed.” Compare these apropos examples:

**Active Voice:** Avoid passive voice for three reasons.

**Passive Voice:** There are three reasons that passive voice *is to be* avoided.

As the examples demonstrate, passive construction creates clunky, vague, elongated text. Conversely, active voice, as the name connotes, is punchy, strong, and concise. Setting aside these benefits, cutting the passive voice will most always eliminate unnecessary words. Readers will thank you for getting to the point.

**Eliminate (most) adverbs.** Many adverbs are the written-word equivalent of “Valley Girl” talk—“like OMG!” They provide unnecessary filler and zero substance. Adverbs should be used sparingly, and only when true. For example, use caution when arguing that “courts consistently find in favor of plaintiffs,” unless you have precedent to back up the proposition. Strong verbs are better substitutions. Instead of “carefully read,” try “scrutinized”; replace “reluctantly stated” with “conceded.” This tip from Mark Twain will easily cure you of adverb abuse: “[s]ubstitute ‘damn’ every time you’re inclined to write ‘very.’” Just (*ahem*) remember to delete the unfavorable replacement words before filing your brief.

**Avoid verbosity and legalese.** Our legal education instilled the virtues of linguistic excess, teaching that legal words should have an abundance of syllables, and writing should incorporate legalese (e.g., “afore-

mentioned,” “henceforth,” “inter alia,” “whereas,”) (*ad nauseum*). Remnants of this “puffery” linger in legal writing, although George Orwell’s instruction from 1946—“never use a long word where a short one will do”—has been echoed for ages. See George Orwell, *Politics and the English Language*, 13 *Horizon* 76 (1946). I likewise applaud the prolific author David Foster Wallace, who lamented the use of “prior to” rather than the simple word “before.” Other common words and phrases that *this* writer recommends curtailing, with suggested substitutes, include: utilize (*use*); pursuant to (*under*); and herein (*below*). In sum, take Justice Scalia’s advice: “if you used the word at a cocktail party, would people look at you funny?” Bryan A. Garner, *Interview of Justice Antonin Scalia*, 13 *Scribes J. Legal Writing* 51, 58 (2010). If the answer is yes, find a plain-English substitute.

**Separate long sentences.** As much as you may enjoy curling up with a stream-of-consciousness-style novel, lengthy sentences in legal writing are unlikely to persuade a judge. Instead of stringing together several thoughts connected by commas or semi-colons, break them into separate sentences punctuated with a period. Avoid the tendency to connect multiple thoughts with connectors such as “therefore” or “however.” Long sentences run together, while the white space offered by a period directs the reader’s attention to the distinctions between multiple thoughts. Think Hemingway, not Faulkner.

**Use quotes sparingly.** The most obvious way to trim a brief is to avoid quotations. The worst offenders are block quotes, described as a “plague,” one of the “primary hallmarks of lazy, mediocre (or worse) legal writers.” Bryan Garner, *LawProse Lesson #266*, LawProse Blog, [www.lawprose.org/](http://www.lawprose.org/). In fact, some judges admit that they implicitly skim or skip block quotes. See Raymond M. Kethledge, *A Judge Lays Down the Law on Writing Appellate Briefs*, 32 *GPSolo*, Sept./Oct. 2015, at 24 (explaining that “[m]ost block quotes are filled with more chaff than wheat, which the writer is too lazy to separate”). The better approach: paraphrase instead and cite the source.

To summarize, you can trim your writing by following these five recommendations: (1) write in active voice; (2) eliminate adverbs; (3) avoid verbosity; (4) separate long sentences; and (5) use quotes sparingly. Just like any “spring cleaning,” decluttering your writing may seem arduous at first, but the results will be well worth the time and effort. **FD**



■ Jodi S. Green is an attorney in the Los Angeles office of Nicolaidis Fink Thorpe Michaelides Sullivan LLP, focusing on appellate and insurance coverage matters. As the chair of the *Writers' Corner* column, Jodi always welcomes a (pleasant) debate on grammar, syntax, and the like.