

## THE BEST SENTENCE

BY MARTHA FAULK

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Ask a group of readers of legal writing what bothers them most about legal documents, and the answer is invariably this complaint: too often the writing is too long. In the seminars that I teach, I always ask participants what frustrates them most about reading legal writings. High on their list of frustrations is long sentences. If long sentences are difficult and annoying for the reader—even one trained in the law—why, then, do legal writers write them? The answer lies in the complex function of legal language. Legal statements must, of necessity, be both generally applicable and yet specific enough for individual circumstances. These statements must also be stable enough to stand the test of time, yet flexible enough to adapt to new situations. In short, legal language bears a heavy burden of responsibility.<sup>1</sup>

### Recognize the Problem

That burden often lures writers into combining many ideas into one lengthy and complex sentence. Clauses are coordinated and subordinated so that several relevant ideas may be combined into a single statement. Repetition may be necessary to make clear whether a new point applies to everything previously stated or to just a portion of it. And, occasionally, long lists of things are useful to reduce uncertainty about whether the law applies to a specific situation.<sup>2</sup>

Despite this burden of responsibility—or perhaps because of it—poets, playwrights, and parodists have gleaned much material from the language of the law. Carl Sandburg, in “The Lawyers Know Too Much,” observed:

In the heels of the higgling lawyers, Bob,  
Too many slippery ifs and buts and howevers,  
Too much hereinbefore provided whereas,  
Too many doors to go in and out of.<sup>3</sup>

<sup>1</sup>David Crystal, *The Cambridge Encyclopedia of the English Language* 374 (1995).

<sup>2</sup>*Id.*

<sup>3</sup>*Complete Poems* 189 (1950).

No matter that we tend to offer sophisticated defenses to criticism of the density of legal language. There is much we can do to make our sentences shorter and more readable. Although determining a document’s essential content may be difficult, it’s usually fairly easy to determine what makes a sentence too long.

### Check Readability Statistics

Use your computer’s grammar checker to discover the average number of words per sentence. This average number will tell you approximately which century your writing fits into. According to Rudolf Flesch, the developer of the “Reading Ease” indicator used in Microsoft® Word, our sentences are shrinking.<sup>4</sup> Linguistic research has shown that English sentences have grown shorter over the centuries. This observation will certainly ring true to any modern reader of novels of Jane Austen and Charles Dickens, for example. Flesch reports that “the average Elizabethan written sentence ran to about 45 words: the Victorian sentence to 29: ours to 20 and less.”<sup>5</sup>

So what do these numbers mean for modern writers? Although much of what we read in the law is historical in its origin, we modern writers should always be aware that we’re writing for modern readers. If we deliver “Elizabethan” or “Victorian” sentence length, then we’ve made reading, and ultimately comprehension, difficult for our readers who are used to discerning meaning in about 20 words.

Flesch, as you might imagine, had special criticism for legal writers. “[T]here is one profession that thinks it can’t live without long sentences: the lawyers. They maintain that all possible qualifications of an idea have to be put into a single sentence or legal documents would be no good.”<sup>6</sup>

Here’s an example from a recent appellate brief that would have made Flesch cringe:

The district court, on the other hand, erroneously addressed but one word of the Bankers Blanket Bond—the term “realized”—and then the district court misapplied it by erroneously considering whether [the appellee] “realized” a benefit and the Bank suffered a loss, which is not a question

<sup>4</sup>*The Art of Readable Writing* 106 (1949).

<sup>5</sup>*Id.* at 107.

<sup>6</sup>*Id.* at 111.

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under the Bankers Blanket Bond: and once the district court found that the Bank suffered a loss it held the Insurer liable without considering the language of the Bankers Blanket Bond as relevant to the issue of whether that loss was covered under the Bankers Blanket Bond.<sup>7</sup>

### Break Up Long Sentences

Close examination requiring more than one reading reveals that this 94-word sentence contains at least four important ideas. Let's break up the sentence into its salient points, omit useless words, add some transitional words, and thus make the writer's ideas immediately comprehensible:

The district court addressed only the term “realized” as used in the Bankers Blanket Bond. Then the court considered whether the appellee “realized” a benefit and the Bank suffered a loss. At that point, the court incorrectly held the insurer liable. The issue is whether that loss was covered under the Bond.<sup>8</sup>

Of course, the corollary benefit to readability is comprehension. If our reader immediately understands our writing, then we are more likely to be persuasive. In the case of the above example, the lawyer-writer would certainly want the judge-reader to be favorably persuaded.

### Omit Useless Words

Getting rid of empty prose is harder than you might think because we writers become fond of our words. Sir Arthur Quiller-Couch, in his celebrated essay “On Jargon,” recommends a kind of ruthlessness. His advice: “If you require a practical rule of me, I will present you with this . . . *Murder your darlings*.”<sup>9</sup>

Which “darlings” do we want to eliminate? Some expressions can be entirely omitted, as in the examples below:

Because (*of the fact that*) construction was delayed by bad weather . . .

The principal obligation of the Trustee is fiduciary (*in nature*) . . . .

In (*the instance of*) our first trial, we did not have

the complete list of witnesses.

Here's a list of some wordy phrases that could easily be reduced:

A large number of	many
Be in receipt of	have
Come to a conclusion as to	conclude
Conduct an investigation of	investigate
During the course of	during
Have a bearing on	affect
In consideration of the fact that	considering
On many instances	often
In reference to	about
Make allowances for	allow for
Make provisions for	provide for
Take into account	consider

Eliminating intensifying adverbs such as *very*, *really*, *actually*, *obviously*, and *certainly* is also good advice. Legal writers should make their sentences self-assured without the crutch of overworked modifiers.

### Acquire the “Shrinking” Habit

These lists of useless and weak words are meant to serve only as examples of common offenders. Many more examples can be found in *Line by Line: How to Improve Your Own Writing*, an excellent compendium of editing techniques published by the Modern Language Association. The author counsels: “[T]rain yourself to recognize and remove empty prose additives. . . . Almost always expendable, any of these terms should set off a reflex action like a flashing light at a railroad crossing.”<sup>10</sup>

Just as stopping at a flashing light becomes habitual, reviewing your written work for long sentences is a worthy habit to acquire. It's as easy as accessing the spell checker program on your computer. If your number of words per sentence is significantly above 20, then it's time to break up those long sentences into shorter units, and get rid of useless words. The results will be satisfying to you, the writer, and edifying to your reader. As Gustave Flaubert, a master of modern prose advised, “Whenever you can shorten a sentence, do. And one always can. The best sentence? The shortest.”<sup>11</sup>

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<sup>7</sup>Martha Faulk & Irving Mehler, *The Elements of Legal Writing* 5 (1994).

<sup>8</sup>*Id.* at 6.

<sup>9</sup>See Flesch, *supra* note 4 at 187.

<sup>10</sup>Claire Kehrwald Cook, *Line by Line: How to Improve Your Own Writing* 13 (1985).

<sup>11</sup>Quoted in Flesch, *supra* note 4 at 106.