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BRYAN GARNER ON WORDS

How to bring a more conversational style to your writing

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Illustration by Sam Ward

The other day a lawyer asked me: “Isn’t one of the hardest things about editing well learning to improve the writing while not changing the writer’s voice?” I said no: When editing most lawyers’ work, I have little regard for the writer’s voice because most lawyers haven’t cultivated a discernible voice. What all legal writers should strive for is to be the voice of reason.

I’d hate to see editors constrained by some notion of not changing voice. In my office, I want everyone making the same types of edits that any professional editor of nonfiction would make—anyone on the copy desk of *The Atlantic*, *Harper’s*, *The New Yorker* or *The Wall Street*

Journal.

If the average legal writer's work were subjected to this type of rigorous editing, lots of hyphens would be inserted in phrasal adjectives (as in *last-straw job-performance discharge*); lots of hyphens would be deleted in what should be solid prefixed terms (such as *nonstatutory*, *posttrial* and *semiretirement*); lots of vague words would be sharpened (*a number of people* becomes *about 30 people*); all repetitions would be artfully disguised or made to seem nonrepetitious; all heavy, sentence-starting connectives (*Accordingly*, *Consequently*, *However*) would be replaced by strong monosyllabic connectives (*So*, *Hence*, *But* [no comma following these]); all legalistic verbiage would be struck completely (look up *verbiage* if that statement puzzles you); all verbose phrasings would be relentlessly tightened up (*prior to the time when* becomes *before*, and so does *prior to* itself—and *persons who, through political elections, seek to serve in public office* becomes *political candidates*); all jargon would be replaced by plain-English equivalents (*pursuant to* disappears in favor of *under* or some other straightforward wording); lots of sentences would be broken up while others would be combined, all with the idea of putting the most emphatic word or phrase at the sentence's end; the syntactic blunder of needlessly separating subject from verb would be cured, especially by moving a modifying phrase to the beginning of the sentence; most parenthetical case explanations would be removed to ensure both that the piece shows adequate paragraph development and that points about cases aren't buried in parentheses; every instance of *is*, *are*, *was* and *were* would be scrutinized skeptically with an eye to replacing it with an action verb; the characters would be given a single sensible name (without alternatives), as different as possible from the other names; acronyms would be replaced by real words to the extent feasible; unnecessary disruptions in chronology would be cured; and all emotionally charged characterizations of adversaries would be deleted so that the tone is cool and calm and factual. A brief, fully comprehensible summary would appear in the first paragraph without any reference to reasons stated below.

PLENTY TO POLISH

Most paragraphs would be shorter than the preceding one. There almost certainly wouldn't be a 326-word sentence. It's just that there's so much work for skillful editors to do.

Oh, and many (hardly all) instances of passive voice would vanish. As you might have noticed in the long third paragraph above, almost every clause is in passive voice (a *be*-verb followed by a past participle: *be replaced*). That's because the actor (a hypothetical professional editor) has already been identified (there's passive voice again!), and the emphasis is on the object that is being subjected (again!) to an action (professional editing). The actor becomes unimportant in constructions of that kind. So we can't be simple-minded in our approach to passive voice: No absolute rule applies.

But the average legal writer uses passive voice unthinkingly: "The RICO claim that is purportedly to be amended by Defendant could have been presented earlier." You recognized two passive constructions there, right? *Be amended* and *been presented*. A professional editor would want something like this: "The RICO claim that Bilsky seeks to amend is one he could have presented earlier."

Or consider this one: "Whether the Brims' gift to the library must be returned because the Brim Lecture Hall has been renamed is an entirely different matter that in no way addresses the actions that were taken by the university prior to the time when the complaint was filed." Did you count the four passive-voice constructions? This writer's "voice" isn't worth preserving. It's a mediocre voice. Let's try this edited version instead: "Whether the university must return the Brims' gift because it has renamed the Brim Lecture Hall is a matter entirely distinct from the university's prelitigation actions." No passives there.

An unknowledgeable, inept editor might object that *has renamed* is passive or that *is a matter* is passive. Not so. The same editor is likely to object that *it* is an unclear pronoun in that revised sentence and that *university* should replace it and appear a second time in the sentence (third time if you count the possessive form). The result would be intolerably clunky. And by the way, there's no syntactic confusion in the revision. No reasonable reader would think so.

You see, editing is a skill not unlike hitting a golf ball or playing a musical instrument. The skillful observer can see how well people perform almost instantly—can immediately distinguish a dozen gradations of skill from the bungler to the virtuoso.

3 KEY EDITING TACTICS

My good friend and mentor John R. Trimble, the University of Texas English professor emeritus, teaches that all good editors do three things to a writer's style: tighten (by combating verbosity), sharpen (by combating vagueness) and brighten (by combating dullness). A fourth, error correction, isn't so much a matter of style as preventing various types of outright blunders—everything from factual mistakes to solecisms.

I recently put the question of voice to Trimble, the author of a superb book called *Writing with Style*. He answered: "Certainly in the nonfiction that lawyers produce, there's little room for 'voice' (as in personality) apart from what you nicely called the 'voice of reason.' But legal prose can certainly aspire to having some snap and aphoristic economy, since such prose helps command our attention and signals a keen intelligence. Commonplace prose suggests a pedestrian mind that's content to simply go through the motions. We hire lawyers to really sell our arguments, not drone them."

So when I ask people to edit, as I often do, I ask them to tighten, sharpen and brighten. And tighten first. One early read-through should be devoted to nothing but eliminating needless words. Let's say a brief-writer has written this 32-word sentence: "Mr. Dunkirk wholly fails to plead Octon Life Insurance Co.'s knowledge of any alleged falsity, nor does Mr. Dunkirk plead any intent on the part of Octon Life Insurance Co. to defraud." That's bloated. We could cut it down to 15 words: "Dunkirk does not allege that Octon Life knew about any falsity or intended to defraud."

And if we change *does not* to *doesn't*, the prose gets a little snappier and more conversational.

But then we may cross the line of what voice the writer considers stylistically acceptable. Trimble, for example, considers a contractionless style only marginally acceptable. He wants smooth, natural-sounding prose that's true to the human voice. People speak with contractions. Readability studies show that contractions enhance both comprehension and ease of reading. So it's no surprise that most good nonfiction produced today contains plenty of contractions.

On the other hand, most legal writers have been conditioned to think of contractions as verboten. They'll write: "They do not allege this because they cannot" instead of "They don't allege this because they can't." You feel the difference? The former feels robotic.

But many superb legal writers use contractions freely. Judge Frank Easterbrook, Judge Neil Gorsuch, Justice Elena Kagan (only in dissents), Judge Alex Kozinski and Chief Justice John G. Roberts Jr. are just a few examples. Start noticing contractions when you read any kind of nonfiction that you enjoy.

Contractions can play a big role in creating an agreeable voice. I recently wrote a book with a dozen illustrious appellate judges as co-authors: a 920-page treatise called *The Law of Judicial Precedent*. With 13 different writers contributing to a single book without signed sections, the challenge was to make the voice consistent throughout. In signing on to the project, my co-authors agreed that I would have final say on all matters of style.

Apart from tightening, sharpening and brightening through 250-plus drafts, I inserted contractions wherever I felt the idiomatic need. Perhaps more than any other change, that one gave the book a consistent tone throughout. And it led to other good edits. Remember: One good edit leads to another. The goal was to have the book speaking as the voice of reason—but always an approachable, companionable voice.

One last thing about good editing: It's an act of friendship, not an act of hostility. Professional-level edits—the kind that would occur on the copy desks of major newsmagazines—make the writer look smarter. () So if a skillful editor revises your work, be grateful, never resentful.

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