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ELEVEN OBSERVATIONS ABOUT LEGAL WRITING

DOUGLAS E. ABRAMS¹

THIS ARTICLE COLLECTS 11 OBSERVATIONS ABOUT LEGAL WRITING THAT I HAVE SHARED WITH LAW STUDENTS SINCE I BEGAN TEACHING IN THE LATE 1970S.

1. “Grounds” vs. “Ground”

Central to resolution of civil and criminal matters, and to the dynamics of policy discussions, is the reasoning – the ground or grounds – that the writer advances to support arguments or conclusions. Properly understood, “grounds” is plural and “ground” is singular.

Acceptable: “Witnesses objected to the proposed regulation on the *grounds* that it would unduly burden small business.”

Better: “Witnesses objected to the proposed regulation on the *ground* that it would unduly burden small business.”

Correct: “Witnesses objected to the proposed regulation on the *grounds* that it would unduly burden small business, and that it would be too expensive to administer.”

2. Rights vs. Authority

A federal, state, or local government actor does not normally have a “right” to take, or not take, official action; the actor has “authority” to determine whether to do so. “Rights” may be held by individuals and entities in their relationships with government actors.

Acceptable: “The city council has the *right* to pass the proposed traffic ordinance.”

Better: “The city council has the *authority* to pass the proposed traffic ordinance.”

Correct: “Citizens have a *right* to petition the city council to pass the proposed traffic ordinance.”

3. “Prior precedent”

When the writer refers to precedent, the descriptor “prior precedent” is redundant because all precedent is “prior.”

Redundant: “The court’s ruling is consistent with prior precedent.”

Correct: “The court’s ruling is consistent with precedent.”

Correct: “The court’s ruling is consistent with recent precedent, but inconsistent with precedent from the 1940s.”



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4. Compound verbs

Writing usually flows more smoothly when the words that form a compound verb remain joined and uninterrupted by other words. Without loss of meaning, the writer can usually place the other words elsewhere in the sentence, even immediately after the compound verb.

Acceptable: “The court *struck* the statute *down* for violating equal protection.”

Better: “The court *struck down* the statute for violating equal protection.”

5. “There is” (and, for example, “There were,” “There are,” and “There will be”)²

Where a draft sentence or clause opens with words such as “There is” or “There are” in whatever tense, the writer should consider crafting a stronger, more-direct substitute by deleting these words and recasting the sentence or clause without the excess baggage.

Acceptable: “There are promising signs on the horizon that predict greater profitability.”

Better: “Promising signs on the horizon predict greater profitability.”

6. Prepositions vs. Possessives

By replacing a prepositional phrase with a possessive, the writer may create an economy of words that maintains the flow and strengthens the message.

Acceptable: “*The reasonableness of the agency decision* depends on one’s viewpoint and interests.”

Better: “*The agency decision’s reasonableness* depends on one’s viewpoint and interests.”

7. “Only”³

Writers often misplace the word “only” in a sentence. “Only” is a limiting modifier that, for the sake of clarity and emphasis, the writer should usually place as close as possible to the word, thought, or clause that it modifies.

Acceptable: “The presumption may *only be rebutted* by evidence that is at least clear and convincing.”

Better: “The presumption may be *rebutted only* by evidence that is at least clear and convincing.”

8. “Of which” vs. “Whose”

“Writing is talking to someone else on paper,” William Zinsser said.⁴ In everyday speech, people may avoid the often stuffy “of which” construction by using the simpler, more conversational possessive, “whose.” Legal writers may achieve a smoother presentation by practicing similar avoidance.

Acceptable: “Some of these entries concern rules, *the violations of which* warrant correction.”

Better: “Some of these entries concern rules *whose violations* warrant correction.”

9. “While”

“While” indicates timing. When drawing a comparison without regard for timing, the writer may achieve greater clarity by deleting the word “while” and using the conjunction “but” or “and.”

Acceptable: “*While* the prospect of an adverse city council decision disturbed opponents, the council also heard testimony from the decision’s supporters.”

Better: “The prospect of an adverse city council decision disturbed opponents, *[but] [and]* the council also heard testimony from the decision’s supporters.”

Correct: “The city council heard testimony from supporters *while* opponents gathered outside the room.”

10. “Since” vs. “Because”⁵

The word “since” can denote timing, so its use to instead help explain an outcome may require readers to double back and reread the sentence to clarify which meaning the writer intends. For immediate clarity, “because” may be the better word.

Acceptable: “*Since* the prosecution put on a weak case last month, Sam Smith escaped serious punishment.”

Better: “*Because* the prosecution put on a weak case last month, Sam Smith escaped serious punishment.”

11. “Upon” vs. “On”

“Upon” usually means “on top of,” “atop,” or “above.” Depending on the writer’s tastes, “on” may be the better word when the writer does not mean to invoke the law of gravity.

Acceptable: “Based *upon* the agency’s findings, the proposed rule would streamline government operations.”

Better: “Based *on* the agency’s findings, the proposed rule would streamline government operations.” 

Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 37,000 times worldwide (in 153 countries). His latest book is *EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS* (West Academic 2d ed. 2021).

2 See RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* 16 (5th ed. 2005).

3 BENJAMIN DREYER, *DREYER’S ENGLISH: AN UTTERLY CORRECT GUIDE TO CLARITY AND STYLE* 253 (2019); RICHARD C. WYDICK, *supra* note 2 at 48 (calling the word “only” “a notorious troublemaker”).

4 WILLIAM ZINSSER, *ON WRITING WELL* x (2001).

5 For entries 10 and 11, I acknowledge the influence of New York Court of Appeals Judge Hugh R. Jones, who explained during my clerkship in the mid-1970s why he preferred the two usages that I have recommended to law students over the years, and that I advance for consideration here.



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