

# Write Better

By  
Paul C. Jorgensen

*The following is the text of a PowerPoint presentation given by Paul C. Jorgensen.*

## **Introduction**

Why do we teach writing? Why is it good to frequently revisit writing techniques? After a recent writing course that I taught, I received this comment, which I print verbatim below.

***“This is an elementary course. Sad actually that its even necessary. But as a former legal writing teacher and writing award winner and having had an article published (with only one edit) two months ago, I’m rather insulted to be required to be here.”***

I found it odd that someone so offended by attending a writing course writes a sentence fragment, doesn’t use the correct contraction for “it is,” creates a run on sentence without commas that lacks internal parallelism and that ends in an awkward flourish of verbs. Yes, even those who think they know how to write need help.

I teach this course because everyone, even if you have been writing for 90 years, needs writing reminders and new techniques. In a world of structures and forms, attorneys and other professionals are often lulled into bad, bad writing. As a client, you should not accept that. As a writer, you have to periodically wake yourself up and become aware of your writing. Language evolves and writing must evolve with it.

That is why we are here today.

## **Before Writing**

Good writing starts before you begin typing or putting pen to paper. These are some of the things that you need to know to make your writing clearer and better. Before you start writing:

1. Know your audience. If you are writing for a business transaction, think of those who will read and need to work with the document.
2. Understand the Goals. Your writing should reflect your goal, which can include a business goal. In any case, make sure you reflect the deal, create a relationship, represent intentions unambiguously, foresee problems, and get the deal done.

3. Know the Cannons of Construction. You need to consider who will read it if something goes wrong: a judge's clerk or arbitrator. For this reason, write with the following in mind:

- a. Words are understood in everyday senses.
- b. The entire document counts, not isolated provisions.
- c. Specific words are given more importance than general words.
- d. Words are presumed to have consistent meanings. Never use two terms for the same meaning.
- e. Documents are construed most strictly against the drafter

4. Choose a Logical Format. This comes from knowing for whom you are writing and what is needed. Too many professionals choose a format that is overkill when a simple format is all that is needed. Lawyers are, in particular, uncomfortable with simple formats and often choose larger formats that can instill worry in the client and jeopardize the deal.

Professionals often also use a form that they have used in the past without considering whether it works for the current need. Before using any form, ask yourself:

- a. Who wrote the form and whose interest did they have in mind?
- b. How are your facts and goals different from those served by the form?
- c. When was it written and what has changed since that time?
- d. Will using all or a portion of the form lead to a patchwork, inconsistent document?
- e. Do you understand **every part** of the form? If not, don't use it.

And, by the way, don't include something just because you think it is "boilerplate" language – you need to understand and mean everything in everything you write.

## **Write, Then Edit Mercilessly**

Now it is time to write. Done? Edit mercilessly – like the toughest editor you have ever known:

1. Plan time for editing, including pauses. No matter how good of a writer you are, your writing needs to be re-read multiple times before it is ready. Ideally, take time between edits so that you can see the document freshly.

2. Print out and edit hard copies. You can better “see” the whole of your writing if you print it out rather than simply scroll through it on your computer. Pick up a red pen and write in your changes.

3. Consider involving others. This helps if you are having trouble with a particular portion. Have another person read it and tell you what they think it means. Did they get it right? Do they have a better way to write it or did you think of one when trying to explain it to them verbally?

Here are the four basic stages of editing:

1. Basic Macro.

a. Does the central point emerge quickly and clearly?

b. Is the logic explicit and sound?

c. Does it fit together and flow? A good technique here is to go through the headings and say out loud what you are intending to convey with each section.

2. Basic Micro. In stage 2, you need to work on the writing itself. In addition to checking for misused words, bad punctuation, inaccurate cross-references and other mechanical problems, you need to look at wordy and needlessly complex construction.

These are some of the most common business and legal writing errors that you can wash out at this stage:

a. Shall. This is a lawyer favorite and very often misused. Here is a paragraph using shall in several ways. Determine the different meanings of “shall.”

**Employee shall maintain confidentiality at all times. Neither party shall disclose confidential information provided to it, as the receiving party, by the other party, as the disclosing party. If a receiving party shall become bankrupt, that party shall**

**notify the other party of the status of confidential information in its possession. The disclosing party shall be allowed to determine the dispensation of that confidential information.**

In this paragraph, shall has FOUR DIFFERENT meanings:

1. "Employee shall maintain" – *has a duty to*
2. "Neither party shall disclose" – *may*
3. "If a receiving party shall become bankrupt," – *future tense verb*
4. "The disclosing party shall be allowed" – *is entitled to*

This is the best reason not to use shall at all. If you must use it, be consistent and limit its use to one meaning, namely "has a duty to." A good way to do this is to make sure that "must" would work just as well.

b. Buried Verbs. This is a huge writing problem. In attempting to sound formal, official or important, writers too often bury the verb. An example:

**Lessee shall submit an application for installation which will take into consideration the Board's readiness to make a decision on the installation of the new System. If selected, Lessee will provide an indemnification for the Board against premise damages.**

Buried verbs often end with the following suffixes: -TION, -SION, -MENT, -ENCE, -ANCE, -ITY. Use the basic verb instead! Let's see how the above paragraph can change:

**Lessee may apply for installation when the Board is ready to decide to install the new System. If selected, Lessee will indemnify the Board against damage to Lessee's premises.**

Although this is still not a good paragraph, we unburied all the verbs, making it cleaner, easier to read and less stuffy. Don't accept buried verbs!

c. Passive Voice Passive voice plagues legal and business writing. Most writers use it because they think it sounds elegant, but it wastes a reader's time. Passive voice adds unnecessary words, fails to say squarely say who is to do what when, and messes up the normal word order of an English sentence, making it hard to read and understand. Here's an example:

**Use of the Services shall be paid for by Tenant. Payments shall be received monthly for such Services. If, for any reason, the charges for the Services shall be deemed excessive and therefore unreasonable, such charges shall be recalculated to be more reasonable.**

Painful, isn't it? Ask yourself: who uses the services? Who provides them? What are the payments for? How much are they? Who pays them? To whom? When? How often? Who deems the charges excessive? Who recalculates them? None of these questions are answered with this passive voice. Do you want that kind of ambiguity in your writing? Try this revision:

**Tenant will pay Landlord \$65 for the Services on the 3<sup>rd</sup> of each month during the Term. If a court finds the Service charges excessive and unreasonable, Landlord will recalculate those Service charges.**

For clarity's sake, draft in the active voice. Passive voice is appropriate only when a) the actor is unknown or inappropriate; or b) the emphasis is on the recipient of the action instead of the actor (e.g., "the plaintiff was awarded \$5000).

d. Redundancies. Many writers (especially lawyers) believe that somehow, if something is good enough to write once, write it several times! These writers don't want anyone to miss a point or find an exception. A good example of this nonsense is:

**Jorgensen transfers, assigns, sets over, and conveys any and all right, title and interest in the Property to Smith to own, hold, possess and enjoy. Smith is ready, willing and able to take the Property title and interest, free and clear of liens, with all power and authority, it being understood and agreed that Jorgensen indemnifies, defends and holds Smith harmless for all types and kinds of claims for such sale and transfer.**

You can knock down redundant phrases by finding the best word among them. Yes, all this jargon can become:

**Jorgensen transfers all his rights in the Property, free of liens, to Smith. Jorgensen will indemnify and defend Smith for all third party claims related to the transfer.**

e. Pointless Complexity. I once knew a lawyer who insisted that threatening letters to people who spoke English as a second language

should be deliberately complex. He actually wanted them to get a lawyer to understand the letter! Apart from being wasteful and crass, that approach ignored the business goal, which was to get the letter recipient to act quickly and stop damage. The experience was a turning point in my approach to the law, and I vowed never to write from his point of view.

Read this paragraph from a real letter and see if you haven't written or received letters like this:

**Despite the fact that we have contacted you previously, you have not modified or discontinued your infringing activity. Our client possesses numerous intellectual properties. Nevertheless, we, at no time, permitted your usage of such properties. Accordingly, it is advantageous to commence compliance at this point in time.**

You can write this way. Just be a good editor and send out the following:

**Although we warned you on March 2, 2006, you continue to infringe our client's trademark. Our client owns many trademarks but has not allowed you to use them. Please stop using the trademark now.**

f. Needless Legalisms. Professional love forms. They think using them releases them from thinking. In my experience, those that administer the relationships created by these forms do not like the forms. They get confused and think that legal flourishes are important or meaningful. Generally they are not. Here's how some contracts start:

#### **WITNESSETH**

**WHEREAS, the party of the first part (hereinafter referred to as "Franchisor") sells and/or licenses a proprietary system for selling fish and trademarks related to such system;**

**WHEREAS, the party of the second part (hereinafter referred to as "Franchisee") wishes to use said proprietary system and the aforementioned trademarks for all purposes pursuant to terms herein; and**

**NOW THEREFORE, for all purposes on the matters set forth herein, the parties agree, for good and valuable consideration, receipt of which is hereby acknowledged by authorized signatories of the respective marks hereinbelow, the parties hereby do therefore agree as underwritten.**

But certainly, we have ALWAYS done it this way! Ok, you can follow a mindless form and hope it applies to your situation or you can use something that you can understand. But wait! What about the “magic legal words?”

a. Certainly we need to use “WITNESSETH”?? Do you know what it means? Most attorneys don’t know either – it is, in fact, an Elizabethan construction of the word “witnesses,” a third person, singular verb. Ask yourself, why would I stick that word at the top of a contract? I cannot think of a reason. If you want to put background about a relationship in a contract, call it “Background.”

b. WHEREAS. The reason you want to use this is because you use it everyday, right: “Whereas I am at the store, darling, would you like me to pick up some lettuce?” Nuts, right? Whereas is a needless flourish that breeds never ending sentences. Replace it with short, declarative sentences.

c. THE PARTY OF THE FIRST AND SECOND PART. No one should use these confusing, archaic identifiers when the parties’ names are available. Also, don’t use identifiers ending with the suffix “EE” and “ER/OR” since this can lead to errors in responsibilities just because of typos. If the agreement is informal, try using “we” and “you”.

d. AND/OR. Use either “and” or “or.” If you get into a dispute, judges view “and/or” as sloppy. If you have to reflect “and/or,” say “x or y or both.” Most often, you can simply use “or” since it includes “and” (e.g., “no food or drink allowed”).

e. SUCH, SAID, SAME. These are wasteful pointer words, but often what they point to is not clear. When you see them, replace them with “THE, THAT, THIS, IT, or THEM.” Better yet, simply use the noun to which you are referring.

f. HEREINAFTER, HEREIN, HEREINBELOW, AFOREMENTIONED. These are very imprecise words so don’t use them. Too often the reader cannot be clear about your reference – are we referring to this sentence, this section, or the whole document? Instead, simply name the section or the document and use that name.

With these in mind, let's simplify the block above:

### **Background**

**We sell or license a system and trademarks for selling fish ("Franchise").**

**You are interested in licensing the Franchise under the terms of this Agreement.**

**The parties acknowledge the mutual consideration under this Agreement and agree:**

3. Advanced Micro. After these edits, you still have a bit of editing:
  - a. Challenge yourself to cut sentences by 25%.
  - b. Replace long words with short words.
  - c. Confirm that subject/verb, verb tense agree.
  - d. Collapse sentences into clauses, clauses into phrases, and phrases into single words.
  - e. Substitute short words for long words, simple words for fancy words

4. Polish Your Work. After you are finished with these editing steps, put your work away, ideally for a day, to get an objective view when you read it again. Inevitably you will find more smooth ways to make your ideas flow, find places where the text bogs down, and find better ways to phrase things.

### **Conclusion**

You should never accept bad writing from yourself or from people who write for you. There are always classes to take, excellent style and grammar manuals to use, and people who will help you. Take pride in your writing and keep practicing.