

The Keys to Clear Writing Convey Thoughts Gracefully

BY SUSAN MCCLOSKEY

The words we first commit to the page or screen seldom say what we want them to say. They render our meaning approximately, sometimes gracelessly. To make them express our thoughts clearly, we need to prod them gently or give them a vigorous shove.

The master key to clear writing is successful revising, the work of taking a second or third look at a draft as if someone else had written it. Successful revision depends on a writer's alertness to the common obstacles to clarity. This essay is about those obstacles and about the steps you can take to turn clear thoughts into clear words, sentences, and paragraphs.

Ambiguous Words

Ambiguous words are the enemy of clear writing. Legal writers are sometimes exempt from this general rule, although less often than many would like to think. Unable to anticipate every contingency, a lawyer drafting an agreement may build some wiggle room into key provisions. A litigator may de-emphasize a client's responsibility by changing the dangerously candid *My client made a terrible mess of things* to the deliberately passive *Mistakes were made*.

Such purposeful ambiguity seldom produces the baffling, knotted legal prose that makes readers despair. Clarity more often falls victim to ambiguity that no writer intends. Its sources are often inconspicuous—pronouns without antecedents, verbs that indicate actions without actors, harmless-looking modifiers. You can spot them only by looking for them and repairing the damage before sending a document into the world.

Pronouns cause ambiguity when writers forget the pronoun's job. The function of any pronoun is to take the place of a noun. If we had only nouns at our expressive disposal, we would have to write sentences like this one: The Defendant claimed that the Defendant could not see the Plaintiff's car entering the intersection because the Defendant's view of the Plaintiff's car was blocked by a UPS truck. With pronouns to serve us, we can write instead, The Defendant claimed that she could not see the Plaintiff's car entering the intersection because her view of it was blocked by a UPS truck.

The pronoun's great utility depends on its one-to-one correspondence with the single noun it replaces. As soon as a writer tries to make a pronoun stand in for an entire concept, trouble ensues. The demonstrative pronoun *this*, for instance, contributes more than its share to obscure legal writing. In the passage that follows, try to determine what the writer means by *this*:

The school board took administrative action against teachers who absented themselves on Veterans Day. This was a violation of the collective bargaining agreement.

The singular *This* that opens the second sentence could replace any singular noun in the first sentence: *school board, action, or Veterans Day*. Among these possibilities, *action* is the antecedent readers would probably choose, because the writer has thoughtlessly left them to their own devices. But it is also possible that the writer means *This* to stand in for the concept represented by *teachers who absented themselves*. The grammatical problem here is that *absented* is a verb, not a noun, so a pronoun can't replace it. The semantic problem is the unresolved ambiguity: Was it the school board's action or the teachers' absence that violated the collective bargaining agreement? There is simply no way of knowing. Readers may guess correctly, but good writers don't leave their readers to guess.

You can solve the problem here by pinning down the meaning of *This*. Once you decide what you mean to say, all you need is a clarifying noun after the ambiguous pronoun:



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The school board took administrative action against teachers who absented themselves on Veterans Day. This *action* [or this *absence*] was a violation of the collective bargaining agreement.

Whenever your draft features *This* without an accompanying noun to clarify its meaning, supply the noun in revision.

The relative pronoun *which* causes the same problem in different form. In the sentence, *My file on this matter is not complete, which means that you must submit any records supporting your claim*, the pronoun *which* refers neither to *file* nor to *matter*. Rather, it refers to the incompleteness of the file, the entire concept represented by the opening clause. A pronoun asked to carry such a burden of meaning will collapse under the load, because it is capable of referring only to a single word. Here, the writer needs to clarify what is meant by making explicit the meaning of *which*: *My file on this matter is incomplete; its incompleteness means that you should submit any records supporting your claim*. This revision clarifies meaning; unfortunately, it also sounds a little strained. More direct phrasing solves the problem: *The incompleteness of my file means that you should submit any records supporting your claim*, or, more simply, *Send me the records supporting your claim so that I can complete the file on this matter*. While *this* may need only a companion noun to clarify its meaning, *which* may require more thoroughgoing revision to eliminate ambiguity.

Other pronouns—*that* and *which*—cause problems of clarity when *which* appears where *that* belongs. Both pronouns introduce relative clauses—that is, clauses meant to define or elaborate the meaning of the noun to which they relate. There the similarity ends. A *which* clause provides incidental information about the noun it refers to; a *that* clause offers defining information. A *which* clause could be excised from the sentence without altering meaning; a *that* clause could not be. A *which* clause is usually set off by a comma or a pair of commas; a *that* clause is seldom punctuated at all.

You can test these distinctions by deciding which pronoun belongs in the blank in this sentence: *Foreign corporations _____ have received certificates of authority enjoy the privileges of domestic corporations*. Out of bad habit, many writers would fill the blank with *which* and leave the clause unpunctuated. But when you apply the “cut-the-clause” test, falsehood ensues. It is simply not true that foreign corporations enjoy the privileges of domestic ones. Only some do, those that have received certificates of authority. Because the relative clause can’t be

cut without misrepresenting the facts, *that* is the appropriate pronoun. It restricts the meaning of *foreign corporations* to the appropriate class.

Passive verbs, a major cause of lost clarity, appear on the top-ten list of baffling words, not because they are ungrammatical or even stylistically graceless, but because they are uninformative. To deprive a reader of essential information is the ready and easy way to banish clarity from any statement. Consider this sentence: *Outside counsel should be hired, and a thorough investigation of the FDIC’s actions should be performed*. The reader of such a sentence has at least two questions, both of which spring from the passive verbs, *should be hired* and *should be performed*. Who is

Passive verbs become active as soon as the writer specifies an actor and places him or her in front of the verb.

supposed to perform these actions? In-house counsel? The company’s CEO? The next-door neighbor? The passive verbs allow the writer to remain stonily silent on this score. And what is the connection between the hiring of outside counsel and the investigating of the FDIC’s actions? Are these actions unrelated, or is outside counsel supposed to do the investigating? A sentence that raises more questions than it answers abandons all claim to clarity and leaves the reader frustrated.

Passive verbs become active as soon as the writer specifies an actor and places him or her in front of the verb: *Fred Evans should hire outside counsel to investigate the FDIC’s actions*, or *Fred Evans should hire outside counsel, and Barbara McDonough should investigate the FDIC’s actions*. The active verbs, *should hire* and *should investigate*, pull the actors back into the sentence, replacing murk with clarity. When you know who did the deed that the verb describes, and when you lack a compelling reason to keep that knowledge to yourself, use the active voice.

One of our language’s trickiest modifiers—the word *only*—is a potent enemy of clarity. We tend in speech to misplace it automatically, without much damage: *I only had enough change for one subway pass* instead of *I had enough change for only one subway pass*. But the standards of clarity are higher in writing than in speaking, in part because the writer isn’t present to straighten out a reader’s confusion. In writing, the misplacement of *only* can lead a writer to write something far different from what he or she intended.

Consider this sentence: *He spoke ill of her on the witness stand*. Place *only* before each word in turn and see what happens to the sentence’s meaning:

1. Only he spoke ill of her on the witness stand [*everyone else spoke well of her*]

2. He only spoke ill of her on the witness stand [*he didn't compound ill speech with ill actions*]

3. He spoke only ill of her on the witness stand [*he never once said anything pleasant*]

4. He spoke ill only of her on the witness stand [*he didn't also speak ill of others*]

5. He spoke ill of only her on the witness stand [*same as number 4*]

6. He spoke ill of her only on the witness stand [*he spoke well of her elsewhere*]

7. He spoke ill of her on only the witness stand [*awkward, but the same as number 6*]

8. He spoke ill of her on the only witness stand [*there was only one stand*]

9. He spoke ill of her on the witness only stand [*only a witness was allowed on the stand*]

10. He spoke ill of her on the witness stand only [*same as number 6*]

Here, seven distinct meanings spring from the placement of *only*; the writer intended only one of them. To avoid the problem, take time in revision to ensure that *only* is where it belongs—usually, right before the word or phrase it modifies.

Unclear Sentences

Legal writers sometimes treat a sentence as if it were a plastic grocery bag, stuffing it with the verbal counterparts of mayonnaise, bananas, and furniture polish to avoid an extra trip from the car to the pantry. But sentences are less sturdy and capacious than grocery bags. Stuff one, and its seams will split. Wedge qualifying phrases and clauses in the space between subject and verb, and the sentence's contents will become a disorderly jumble.

Consider what happened to a thought that probably took shape in the writer's mind as *The insurer's right to subrogation survives the enactment of Connecticut General Statute § 52-225c*. By the time it touched down on the page of an internal memorandum, stretched out and crammed full, it looked like this:

Based on the language of Conn. Gen. Stat. § 52-225c, its legislative history, and its construction and interpretation with other Connecticut statutes as well as the common law, a good argument can be made that the statute does not affect an insurer's right to subrogation *and* that right has survived the enactment of that statute, *although* a decision, *Sargeant v. International Union of Operating Engineers, Local Union 478 Health Benefits and Insurance Fund*, 746 F. Supp. 241 (D. Conn. 1990), in which the Court implied, in *dicta*, that an insurer's right to subrogation may not have survived the enactment of the statute, may undermine this argument.

This sentence violates two cardinal principles of clear construction. First, it is far too long. The meaning would

be clearer if the writer did nothing more than divide the sentence at the italicized conjunctions and substitute *However* for *although*:

Based on the language of Conn. Gen. Stat. § 52-225c, its legislative history, and its construction and interpretation with other Connecticut statutes as well as the common law, a good argument can be made that the statute does not affect an insurer's right to subrogation. That right has survived the enactment of that statute. *However*, a decision, *Sargeant v. International Union of Operating Engineers, Local Union 478 Health Benefits and Insurance Fund*, 746 F. Supp. 241 (D. Conn. 1990), in which the Court implied, in *dicta*, that an insurer's right to subrogation may not have survived the enactment of the statute, may undermine this argument.

In a world of page-limits and word-counts, remember that no one has prescribed the number of sentences a document can contain.

A second principle of clear sentence construction would clarify the last sentence in the passage above, which suffers from a badly disrupted core. The core of any sentence includes the grammatical elements that convey its essential meaning. *He won* is a complete sentence, for instance; its verb specifies an action (*won*), and its subject (*he*) specifies the performer of the action. In any sentence, these two elements act as the nucleus around which a careful writer arranges the remaining elements. The closer the subject and verb, the clearer the sentence. Sentences more complex than *He won* include a direct and sometimes an indirect object. Together, these three or four elements indicate who did what (*He won the case*) or who did what to or for whom (*He won the case for his client*).

In the unrevised sentence above, the verb, *may undermine*, and the direct object, *this argument*, pass the test of proximity. But the subject, *decision*, is separated from the verb by an appositive phrase, two relative clauses, and a prepositional phrase. The writer's meaning becomes easier to grasp as soon as she reduces that distance:

A 1990 decision may undermine this argument.

She can then place the intervening material in a new sentence of its own:

In *Sargeant v. International Union of Operating Engineers, Local Union 478 Health Benefits and Insurance Fund*, 746 F. Supp. 241 (D. Conn. 1990), the Court implied in *dicta* that an insurer's right to subrogation may not have survived the enactment of the statute.

The writer might apply the same clarifying principle to the first sentence of the passage. Here, moving the subject and verb closer together involves the prior step of accurately identifying the sentence's true subject. The current subject, *argument*, is a mere place-holder. The real subject is the evidence supporting the writer's con-

Divide most long sentences into shorter units, and structure each sentence so that its core elements (especially its subject and verb) are close together.

clusion that the insurer's right to subrogation survives the statute's enactment: the statute's language, legislative history, construction and interpretation, and the common law. The writer originally downplayed the importance of that evidence by subordinating it in the participial phrase beginning *Based on*. She also muffled the core verb (*could be made*) by making it passive. Once she makes the evidence her subject and makes the passive verb active, her point and the entire passage become clearer:

The language of Conn. Gen. Stat. § 52-225c, its legislative history, and its construction and interpretation with other Connecticut statutes and the common law indicate that the statute does not affect an insurer's right to subrogation. That right survived the enactment of the statute. A 1990 decision, however, may undermine this argument. In *Sargeant v. International Union of Operating Engineers, Local Union 478 Health Benefits and Insurance Fund*, 746 F. Supp. 241 (D. Conn. 1990), the Court implied in *dicta* that an insurer's right to subrogation may not have survived the enactment of the statute.

When you want your sentences to be clear, direct, and easily intelligible—a goal always worth aiming for—take these two steps in revision: Divide most long sentences into shorter units, and structure each sentence so that its core elements (especially its subject and verb) are close together.

Unclear Paragraphs

Four principles govern paragraph development, and all contribute powerfully to clarity. The first pertains to the paragraph's function, the second and third to the sentences it contains, and the fourth to the connection between one paragraph and the next. Each contributes to clarity; together, they reinforce the logical power of a legal analysis or argument.

The first principle is that a paragraph develops a single point. Paragraphs that try to develop multiple points suffer from either vagueness or excessive length. In either case, they frustrate the reader's efforts to follow the logical progress of the writer's analysis or argument. Long, poorly defined paragraphs also deprive the reader of the visual cue of a paragraph break, which sig-

nals that the writer has finished considering one aspect of the topic and has taken up another.

The second and third principles are closely related. The second is that the opening sentence usually defines the paragraph's focus, telling the reader what the paragraph is about. The reader should be able to review the contents of a well-written document by rereading only the topic sentence of each paragraph. The third principle is that the remaining sentences should develop the topic sentence's point. A careful writer often reinforces the logic of this development through words or phrases that link one sentence to the sentence before. Those most often and appropriately used by attorneys are conjunctive adverbs, such as *furthermore* and *thus*, or prepositional phrases, such as *in addition*.

The fourth principle extends the idea of connection from consecutive sentences to consecutive paragraphs. Sometimes the logical or narrative continuity between one paragraph and the next is so clear that no explicit link between them is necessary. But sometimes only transitional words, phrases, and clauses can make clear to the reader how paragraph B relates to paragraph A. For instance, when one paragraph closes with a strong assertion and the next opens with the word *However*, the reader instantly grasps that the new paragraph will qualify or challenge that assertion. A paragraph without a strong transition may require the reader to leap from one topic to another. Good writers remember that readers prefer to cross the bridges between paragraphs that good transitions create.

Confusion results when a writer overlooks even one of these four principles. A reader left to wander through ill-constructed blocks of text without the writer's guidance is soon lost and sooner exasperated. The following paragraph illustrates the problem:

The UCC states that express warranties by the seller are created by "any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain." Our client must prove that 1) the promise related to the goods, and 2) the promise became part of the basis of the bargain. In *Sparks v. Stich*, the plaintiff buyer sought to invoke an express warranty for the sale of used farm equipment where the defendant seller had stated that the equipment was in "good working" order. The court held that "this general expression [does] not warrant against all imperfections. . . . This is particularly so in view of the low cost of each item and its used condition."

The writer's neglect of the single-point-per-paragraph principle compromises the clarity of his analysis. The paragraph deals with three different topics: what the UCC says, what the client must prove, and what the court held in *Sparks v. Stich*. A resourceful reader might

intuit the connection between the first two topics, but the writer's meaning is clearer as soon as that link becomes explicit:

The UCC states that express warranties by the seller are created by "any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain." *To establish an express warranty*, our client must prove that (1) the promise related to the goods, and (2) the promise became part of the basis of the bargain.

How does the point of these two sentences—the client's burden in light of the UCC—relate to the focus of the third and fourth sentences, *Sparks v. Stich*? Here, even a nimble reader might balk at the intuitive leap the writer requires her to make. At the very least, the writer should give the case a paragraph of its own and relate it to the preceding paragraph through an effective transition:

Case law further defines the elements of express warranty, implying a degree of specificity in connection with the seller's representation. In *Sparks v. Stich*, the plaintiff buyer sought to invoke an express warranty for the sale of used farm equipment where the defendant seller had stated that the equipment was in "good working" order. The court held that "this general expression [does] not warrant against all imperfections. . . ."

Here, the new second paragraph retains the focus of the first and extends it from the UCC to case law. Other logical links, including transitional words and phrases (such as *Second*, *Moreover*, *In addition*) are also possible here, but all serve the purpose of alerting readers to the logical connection between what they have just read and what they are about to read.

These revisions move the original paragraph closer to the goal of clarity. The writer can go the entire distance by stating the true focus of the first paragraph at its outset. That focus is not merely what the UCC says, but the bearing of the Code on the client's actions:

The UCC specifies the circumstances under which our client can prove that an express warranty exists. An express warranty is created by "any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain." Accordingly, our client must prove that (1) the promise related to the goods, and (2) the promise became part of the basis of the bargain.

Case law further defines the elements of express warranty, implying a degree of specificity in connection with the seller's representation. . . .

Such revisions at the paragraph level offer a writer greater opportunities for clarity than revision of words and sentences alone can provide. In most legal documents, the paragraph is the significant unit of thought,

the space in which a litigator sets forth a point in an argument or a transactional attorney defines a responsibility of a party to an agreement. The discipline of checking your paragraphs to ensure that each has a topic sentence, a cohesively developed single point, and a strong link to the preceding paragraph can help you clarify a cloudy piece of writing and transform a clear piece into a compelling one. Well-constructed paragraphs, in short, are keys not only to writing clearly but also to winning arguments and closing successful deals.

Clarifying Examples

Even the most careful revision may sometimes leave a writer short of the goal of clarity. Unambiguous words, sentences of moderate length with intact cores, and paragraphs of tested soundness can do most, but not all, of the work that clarity requires. Legal principles are necessarily abstract, and the analyses and arguments that spring from them can all too easily follow suit. To counter this tendency, rely on two extraordinarily helpful words: *for example*. The best legal writers provide examples with disciplined abandon.

The most common example converts an abstract statement into a concrete instance, as in this passage:

A foundation meets the "public support" test if it normally derives at least one-third of its gross receipts in the form of gifts or grants from qualifying public or governmental sources. For example, if the foundation has total gross receipts of \$100,000 during the advance-ruling period, it is required to collect at least \$33,334 from qualifying public or governmental sources—that is, from individual donors and local, state, or federal agencies.

By spelling out the foundation's responsibility in actual dollars and by specifying the meaning of qualifying public or governmental sources, the second sentence restates the meaning of the first in terms even a distracted or numbers-averse reader can grasp. But even a focused reader appreciates the way the example confirms that he has in fact understood the writer's initial point.

The same clarity can be achieved by translating a complex point into simpler terms. In the following passage from a land-use case, the first sentence is reasonably clear. The second makes it clearer still:

The court concluded that if A holds property for public use and plans to develop that use only at some indefinite future date, it cannot prevent B from taking the property by eminent domain for an inconsistent public use. In other words, at least in eminent-domain cases, the tortoise doesn't always beat the hare.

By wittily translating the abstract meaning of the first sentence, the second reinforces the writer's point and makes it memorable.

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The best legal writers, such as Oliver Wendell Holmes, have the habit of exemplification. Holmes's mind seemed to oscillate naturally between abstract principles and the specific instances that made them luminous. When he wanted to illustrate a limitation on freedom of expression, for instance, he imagined a man falsely shouting "fire!" in a crowded theater. To crystallize the difference between intentional and unintentional harm, he observed that "even a dog distinguishes between being stumbled over and being kicked."¹ Both examples ground the legal principle in daily experience, an inexhaustible vein that any writer seeking a clarifying instance can easily mine.

The keys to clear writing described here turn the general injunctions "Be clear!" and "Revise!" into specific things you can look for in your words, sentences, and paragraphs when clarity is your goal. Add them to your ring and use them. They will help you streamline the process of revision, making it possible for you to rework your documents fewer times. And you'll achieve what every good legal writer aims for: a clear, successful result.

1. Oliver W. Holmes, *The Common Law* 3 (1881).