The American Bar Association
Center for Continuing Legal Education

Presents

Advanced Writing for Lawyers
with
Gary Kinder

Kinder Legal
5403 Ivanhoe Place NE
Seattle, WA 98105
Phone: 206-517-5999
Fax: 206-517-5993
kinderlegal@attbi.com

American Bar Association
Center for Continuing Legal Education
541 North Fairbanks Court, Suite 1600
Chicago, IL 60611-3314

For more information about the American Bar Association and ABA-CLE…

ABA Member Services: 800.285.2221

Web Site: http://www.abanet.org/cle

UNIFORM CERTIFICATE OF COMPLETION
ABA SELF-STUDY COURSES

To acquire a Uniform Certificate of Completion for ABA self-study courses:

- **visit the ABA-CLE Online Catalog at *www.abanet.org/cle/catalog*, or**
- **call our FaxInfo! service at 1.800.995.1253 and enter number 4004 when queried. A Certificate will be faxed directly to you.**

The ABA has requested accreditation from those states approving self-study. Within 30 days of this activity, **the attorney must file this Certificate with his/her MCLE state agency if licensed in** CO, FL, GA, IN, KS, KY, MS, NM, NV, VA, or WV. ***Do not*** **file this Certificate with your MCLE state agency if licensed in** AZ, CA, ID, MN, MO, MT, NH, NY, OK, OR, UT, VT or WA. Filing of Certificates is optional in all remaining states with MCLE requirements. Attorneys should keep the original or a copy of this Certificate for your files. The ABA pays applicable fees in other states where the sponsor is required to do so, and in states where a late fee may become applicable. Please be aware that each state has its own rules and regulations, including its definition of "CLE"; therefore, certain programs may not receive credit in some states. Check with your state for confirmation of a program's approval.

NEW YORK LICENSED ATTORNEYS

Do not use this Certificate. Please complete the ABA Self-Study Confirmation Form for New York Attorneys. Fill out and return to the ABA as indicated on the Form.

- **On the Web: *www.abanet.org/cle/mcleview.html#newyork* .**
- **On ABA FaxInfo service: 1.800.995.1253, select document number 4005.**

Table of Contents

WELCOME . . .

. . . to the ABA's interactive CLE, Advanced Writing for Lawyers, the finest instruction you can receive in the most important skill you can possess. I can't guarantee results, but I can promise you this: No matter how well you write, when you venture into the series, you will discover ideas and techniques for improving your writing beyond what you thought possible.

I have designed the course and the exercises to be not only challenging, but also enjoyable. I give you immediate feedback and offer you repeat lessons with all-new exercises, so you can return often to keep your writing skills sharp (and your CLE requirements fulfilled in most states).

The presentations appear under two categories: In the Power Editing series, I show you how to get rid of useless words, dull phrasing, and convoluted structure, to leave your writing clean and crisp and faster paced. Under Power Persuasion, I examine ways to enliven your sentences to make them compelling and convincing, whether you're trying to persuade a judge or negotiate with an opponent. Later I will present the Masters Series for those who want to take their writing to an even higher level.

In these materials I mention many writing problems lawyers face, list some of the topics I'll be covering in future presentations, and give you exercises similar to those you can try yourself online for immediate feedback.

Since 1988, I have taught lawyers around the country how to refine and enhance their writing. I use the same ideas to write my books of narrative nonfiction. They work, and when you've tried them, you will see how much more effective you can be.

One suggestion: I have arranged the presentations sequentially; I urge you to follow the sequence the first time; after that, brush up in any area you wish as often as you wish.

POWER EDITING

In this series, I show you how to make your writing more readable by tossing the junk, invigorating your sentences, and arranging those sentences for forward movement. Think of it as streamlining.

I don't waste your time talking about grammar; you already know how to write grammatically. The problem is, grammatical doesn't mean good. Useless and dull words often inhabit our grammatical sentences, and they're right in front of us, but we can't see them. I give you specific clues that will help you spot many of these words.

Once we get the junk out of our grammatical sentences, we still have to clear away other obstacles that frequently impede our readers. I describe them for you and show you how to untangle them, so the reader can move quickly through what you have written.

We start slowly; I explain the tips simply, illustrate them graphically, then let you take over. I have designed the exercises to become more challenging as we gain momentum.

POWER EDITING

PART I: Getting Rid of Junk

Our writing abounds in unnecessary words that the tired eyes and weary minds of judges, clerks, and clients must sort out before they understand us. If we want these readers to look favorably upon our writing, our case, and us, we must lighten their load. It starts with this concept: A word's job is to convey meaning; if a word is not conveying meaning, it's not doing it's job; if it's not doing its job, it's getting in the way of the words that are trying to do their jobs. There is no middle ground. We're never going to catch them all, and we'll sometimes debate about the necessity of, or our preference for, others; but the essence of good writing is this: Every word that is not working must come out.

You can spot a large percentage of junk words by using the four simple tips I illustrate at the site. When you finish, you will know how to reduce the following paragraph from 104 words to about 60. It was written by a federal judge who labored for a long while to refine it as you see it here. Fortunately, the judge has a thick skin and a sense of humor, and he agreed to let me use it so we all can learn.

> It is no secret that, from the standpoint of client interests, modern litigation is an outright disaster. The costs of adversary litigation have become so disproportionate to the benefits, that a trial of the merits of a lawsuit provides virtually no possibility of justice. The verdict comes too late, and the expense is too high. In practice, litigation is capable of producing justice only by agreement, and only when the agreement is reached early in the case. For this to become the norm, however, rather than the rare exception, will require basic changes in attitude on the part of everyone involved in the system.

Try to edit it now, and see how you do; then try again later at the site, after I've explained the four tips to help you see the problems.

A note about style: A hundred lawyers could each write a paragraph describing the same horse in the same pasture. We'd have a hundred paragraphs; although each would be different, each could be perfect, even though some might be longer than others. Our writing styles dictate the difference. But we all can follow the same approach to refine that individual style.

To start the refining, let me show you five kinds of words that work nary a lick, yet show up every payday with their hand out. We need to get rid of them.

Redundancies

Don't confuse redundancy with repetition. A redundancy modifies another word. Although a redundancy is repetitious, the repetition occurs as the redundancy repeats the essence of the word it modifies, making it superfluous.

For example:

true facts	binding contract
brief overview	short synopsis
mandatory requirement	excess verbiage
patently obvious	actively engaged
expressly mandated	

Junk Words

We put words in our sentences to do a job, which is convey meaning. If they are not doing their job, they need to come out, because they are getting in the way of the words that are trying to do their job. With all of those extra words standing around doing nothing, the reader has to work harder to find the meaning.

For example:

clear, clearly
inherent, inherently
purposes
necessary
undertake
very
specifically
squarely
essentially
evidently
any
personally
merely
given
incurred
really
sometime
express, expressly
steadfast, steadfastly
simple, simply
totally
just
quite
respective
duly
basically
currently
directly
actually
just
apparently
applicable
individual

Junk Phrases

Many lawyers would sooner appear naked before a judge than write, "If the plaintiff must pay . . . ." They feel less vulnerable hiding behind a bit more pomposity and a lot more verbiage. So they write, "In the event the plaintiff is forced to incur the cost . . . ." The common notion is that these additional words add gravity. Additional words do not add gravity – they add additional words.

For example:

question at issue	with respect to
with certain knowledge	by the clear language of
whether or not	to the extent possible
purports to rely	has no bearing on this case
appears to have no relevance	decline to accept
reason why	at the time
incur the cost	is indebted to
at all	among other things
briefly stated	no doubt
desires to obtain	the evidence indicates that
the fact that	for all practical purposes

Clichés

In casual conversation, we sometimes speak in clichés because we can connect quickly, but even in conversation, if we hear clichés too often, we think, "This guy's an idiot." On paper, that impression comes quicker and more often. To wit: "The plaintiff is barking up the wrong tree." I don't know if that cliché comes from someone herding a posse of dogs after a fox or a raccoon, but the first person to use it as a metaphor to describe someone whose energy is headed in the wrong direction must have been a clever sort. At its origin a cliché is clever (that's why everybody started repeating it, and that's how it became a cliché). But we didn't think of it, and it's been uttered billions of times between then and now, so coming from us it sounds tired, trite, hackneyed, and like we're not capable of expressing ourselves without borrowing from someone else. That's okay if we're teenagers and still trying things on, but it doesn't sound right coming from an intelligent adult, especially in writing, especially a lawyer, especially in briefs, from which a Ninth Circuit judge plucked the following:

For example:

the bottom line	tip of the iceberg
open Pandora's box	the whole ball of wax
catch-22 situation	back to the drawing board
the best of all worlds	a disaster area
out of the blue	get off his back
state of the art	high and dry
avoid like the plague	hit the nail on the head
few and far between	the forest for the trees

Lawyerisms

These are little hangovers from the carefree days of serfs, seisin, and the Rule Against Perpetuities. Judges and clients suffer the headache. Almost everybody agrees we can get rid of these words (even in contracts), but far too many remain.

For example:

pursuant to
per
said
aforementioned
ab initio
inter alia
on or about
by and between
in and to
full and complete
suffer or incur
any and all
aforesaid
set forth
arguendo

hereby
herein
herewith
hereinafter
heretofore
therein
thereof
thereby
therefrom
therewith
thereinafter
theretofore
wherein
whereof

In future parts of the Power Editing Series, we discuss other ways to make our good writing even tighter, crisper, and more compelling. Power Editing Part II takes us into the Emergency Room, as dull sentences lay dying, stricken by passive voice and nouns that should be verbs.

Passive Voice

We're all sick of hearing that we shouldn't write in the passive voice. We're sick of hearing it because we're told constantly not to do it, and we're told constantly not to do it because passive voice drastically and unnecessarily slows and dulls our writing. In Part II, we examine the quiet world of passive voice and the four exceptions to writing in the active.

Nominalizations

Few of us have even heard of this word, yet nominalizations slow and dull our sentences as often as passive voice. A nominalization is a noun that should be a verb. Instead of bringing motions, issuing rulings, and making recommendations, let's move, rule, and recommend. Again, in Part II, we explore the powdered and bewigged chambers of the nominalization.

In Power Editing Part III, I show you how to take your reader ever forward by collapsing negatives and repetition, and rearranging your sentences for quicker movement.

Negatives

The human brain has to work hard to absorb negatives. Law school and the practice of law train judges and lawyers to comprehend negatives and strings of negatives quicker than the average reader. But even judges and lawyers digest the affirmative much faster than they do the negative. Also, writing in the affirmative often eliminates one or two unnecessary words.

Repetition

Of all the problems lawyers have trying to write clearly, this is the most serious. Readers expect to advance with each sentence. Don't take them backward. Say it once, clearly and forcefully. Often the essence of two sentences can be distilled in one.

Interrupting Clauses

After steeping in case headnotes for years, a portion of the lawyer's brain atrophies. This is followed by the onset of an insidious disease called "clariphobia," which is the fear of writing a sentence in a straight line. Symptomatic of the disease are sentences that start out like bullets, then mid-flight become butterflies that flit and flutter through conditions, negations, and other considerations. Unfortunately, the reader's mind wanders off with the butterfly. Fortunately, the symptoms are easy to recognize and easy to treat. Most often the interruption appears either between the subject and the verb, or between the verb and the object.

Editing Checklist

clean out the junk

convert the passive to active and nouns to verbs

rearrange the sentence for forward movement

fine tune

Exercises

In Parts I, II, and III, you will learn fast, efficient ways to turn the following examples into the rewrites I suggest. I realize that improving one sentence will make no difference in the impression we create with a client or judge, but multiply each improvement by 50 or 100, maybe 200 or 300, the number of sentences in our brief or memorandum, and it can make a great difference, sometimes the difference between winning and losing (clients and cases).

One:
Considering all of the evidence, it was within the province of the trial judge to conclude that the plaintiff's speed contributed to the accident.

Considering all of the evidence, the judge could conclude that the plaintiff's speed contributed to the accident.

Two:
The Court has the authority to determine the issue and should do so here in an effort to avoid further and protracted litigation below.

The Court has the authority to determine the issue and should do so to avoid further [or protracted] litigation.

Three:
The Court of Appeals in this cause on the first appeal, in which Thornton prevailed, determined that usury had occurred in this cause and remanded the case to the Trial Court.

On the first appeal, the court determined that usury had occurred and remanded the case.

Four:
Each defendant shall have 10 days in which to file a reply to plaintiffs' response. Unless by leave of the court, no reply shall exceed 10 pages in length.

Each defendant shall have 10 days to reply, and no reply shall exceed 10 pages.

Five:
It is important to note that plaintiff uses these allegations to support its claim for tortious interference with a business contract. In order to succeed on this tort, plaintiff must prove . . . .

Plaintiff uses these allegations to support its claim for tortious interference with a business contract. To succeed, plaintiff must prove . . . .

Six:
This is because the new program is more onerous on its face than existing regulations, and also because the new program is likely to be implemented with

greater zeal in light of the listing of local salmon and steelhead species as "threatened" for purposes of Endangered Species Act regulation.

This is because the new program is more onerous and authorities are likely to implement it with greater zeal where local salmon and steelhead are listed as "threatened" under the Endangered Species Act.

Seven:
In its complaint, plaintiff alleges broad, overreaching, and extensive tortious conduct on behalf of defendant.

Plaintiff alleges broad, overreaching, and extensive tortious conduct.

Eight:
Unlike the plaintiffs' requests in *Atlanta Housing Authority*, all of defendant's items requested in its Production of Documents are relevant to this lawsuit.

Unlike the plaintiffs' requests in *Atlanta Housing Authority*, all of defendant's requests are relevant.

Nine:
There is nothing in the language of Proposition 65 or its legislative history to indicate that such duty exists, and we do not believe such duty should be inferred from the statutory language.

Nothing in Proposition 65 or its legislative history indicates such duty, nor should it be inferred.

Ten:
It should be noted that an oral notice of intent to renew, where a written notice is required under the terms of the lease, is sufficient to constitute an effective exercise of the option.

Even where the lease requires written notice, an oral notice of intent to renew exercises the option.

Or:

An oral notice of intent to renew exercises an option, even where the lease requires the notice to be written.

Or even something like:

Oral notice exercises an option, even if the lease says it must be written.

ABOUT GARY KINDER

Since 1988, Gary Kinder has taught lawyers around the country how to make their writing clear, concise, and compelling. His in-house clientele includes some of the largest law firms in the country, and lawyers frequently evaluate his one-day seminar, *Writing Techniques for Winning Cases*, as the best CLE they have ever attended. Kinder not only is a lawyer but also the author of three books of narrative nonfiction, including the critically acclaimed *New York Times* bestseller, *Ship of Gold in the Deep Blue Sea*.

HOW HE BEGAN TEACHING TO OTHER LAWYERS

As a student at the University of Florida College of Law, Kinder won awards in statewide legal writing competition. Upon graduation, he was asked to teach in the College's legal writing program. After passing the Florida Bar, he traveled west and worked as a prosecutor before deciding to devote his career to writing. His first two books of investigative journalism were bestsellers. *The Washington Post* called Kinder's *Victim* "a mirror of Truman Capote's *In Cold Blood* in its intensity and the feeling of 'being there'."

Armed with reviews describing his prose as "absorbing and cleanly written" (*Newsweek*) and hailing him as "a highly gifted writer" (*The Boston Herald*), he approached the Seattle firm of Perkins Coie in 1988 about becoming an in-house editor. A partner at the firm had a different idea - have Kinder teach the firm's lawyers how to do what he did so well: write precisely, vividly, and memorably.

Kinder developed his first course to help lawyers make their writing more accessible and streamlined. Within months he was presenting the seminar to Latham & Watkins in Los Angeles and to other national firms. Since then, it

has evolved into an all-day presentation of advanced writing techniques that is one of the most highly recommended CLEs in the country.

HIS PHILOSOPHY

Kinder encourages lawyers to keep their natural writing style, but work to improve that style. In his courses, he explains the essence of what makes writing difficult, so lawyers can see more clearly what they are trying to achieve. He realizes that no single technique he teaches will win a case or impress a client, but cumulatively, the techniques greatly increase your chances.

To keep his instruction true to a lawyer's practice, he selects all of his examples from briefs, statutes, decisions, agency rules, contracts, and letters to clients.