



Use 5-cent words for 10-dollar ideas

Prefer the short word to the long

By Matthew Salzwedel

Special to Minnesota Lawyer

Supreme Court Justice Clarence Thomas isn't a fan of big words in judicial opinions. "The Atlantic" recently quoted him as saying that he tries to write opinions so that non-lawyers can understand them: "[W]e write [opinions] so that they are accessible to regular people. That doesn't mean that there's no law in them. But there are simple ways to put important things in language that's accessible. [T]he beauty, the genius is not to write a 5-cent idea in a 10-dollar sentence. It's to put a ten dollar idea in a 5-cent sentence."

Justice Thomas gives sensible advice in the abstract. But how, in practice, can lawyers use simple words to convey complex ideas? And is simplified legal writing more effective in persuading judges and satisfying clients? To answer these questions, let's first put the justice's advice in historical context.



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Attic and Asiatic styles

Generally speaking, writing tends to fall within two literary styles, both of which were born from ancient Greek and Roman rhetoric.

As Bryan Garner explains in "The Elements of Legal Style," the Attic style is "refined conversation: concise, restrained, shorn of intricacy." In contrast, the Asiatic style is "a florid oratorical style [that] sports elaborate antitheses, complicated syntax, and correspondences in sense and sound."

Since Cicero debated the merits of each style in his "Orator" (46 B.C.), there's been conflict between proponents of each style. In the 20th Century, for example, this conflict took the form of barbs ex-

changed by Nobel Prize winners William Faulkner and Ernest Hemingway. During one exchange, for example, Faulkner accused Hemingway of "never [using] a word that might send a reader to the dictionary." Hemingway retorted, "Does [Faulkner] really think big emotions come from big words? He thinks I don't know the 10-dollar words. I know them all right. But there are older and simpler and better words, and those are the ones I use."

Although each style boasts an impressive pedigree, since at least the mid-19th Century most writing authorities have told writers to adopt the simpler Attic style. Sir Ernest Gowers, in the "Complete Plain Words" (1954), boiled down this advice to six words: "Be short, be simple, be human."

But this general writing advice never fully penetrated legal writing, which clung to its Asiatic roots. For the most part, we can blame the law schools. Since the casebook method of legal instruction was invented in the early 19th Century, lawyers have learned a "bastardized Asiatic style" (Garner's term) by adopting the style of antiquated opinions found in law-school casebooks, which buried legal concepts in sprawling, dense prose, and legal jargon.

In the last 50 years, the plain-English movement — which emphasizes simplicity, clarity, and concision — marginalized the remaining defenders of the Asiatic legal-writing style. Yet paying lip service to plain-English principles isn't enough. So, again, how can lawyers ditch the Asiatic style and learn how to write simply in practice? It's not as hard as it might seem.

Use short, familiar, Anglo-Saxon words

Lawyers who write simply use short, familiar Anglo-Saxon words. In "The King's English" (1906), H.W. Fowler summarized this idea in five related principles: "Prefer the familiar word to the far-fetched. Prefer the concrete word to the abstract. Prefer the single word to the circumlocution [roundabout expression]. Prefer the short word to the long. Prefer the Saxon word to the Romance."

Practicing Fowler's five principles means, at the very least, replacing Latinisms — *i.e.*, words, idioms, or phrases borrowed from Latin — with simpler English substitutes. True, Latinisms have



filled voids in the English language. Examples of void-fillers are *alibi*, *amicus curiae*, *de minimis*, *ex parte*, *habeas corpus*, *prima facie*, *res ipsa loquitur*, *stare decisis*, and *voir dire*. But other Latinisms are quite avoidable: *ab initio* (from the start), *arguendo* (for the sake of argument), *inter alia* (among other things), *gravamen* (crux, gist), *res gestae* (things done), *sua sponte* (on its own), *sui generis* (unique), and *vel non* (or not, or the lack of it, them).

Besides replacing Latinisms, lawyers who write simply always choose the simpler word or phrase. In "The Redbook: A Manual on Legal Style," Garner lists more than 150 complex-simple choices. Here are a few: *acquire/procure* (get), *adjacent/contiguous to* (next to), *ameliorate* (improve), *ascertain* (find out, make sure), *authored* (wrote), *cognizant* (aware), *commence* (begin, start), *conjecture/surmise* (guess), *demonstrate* (show), *discontinue* (stop), *elucidate* (explain), *endeavor* (try), *erroneous* (wrong, incorrect, mistaken), *evidencing* (showing), *facilitate* (help, ease), *forward vb.* (send), *frequently* (often), *implement* (carry out, set up), *incongruous* (unfitting, incoherent), *individual(s)* (person, people), *inform* (tell), *inimical* (adverse, hostile), *intimate vb.* (hint), *multitudinous/numerous* (many), *notwithstanding* (despite), *render* (make, leave), *request* (ask), *reside* (live), *subsequent* (later), *transmit* (send), and *utilize* (use).

Close editing catches these complex-simple choices. When editing, lawyers should ask themselves whether a non-lawyer would be bewildered by a word choice. For example, no lawyer would say to a non-lawyer friend that "I'm going to

the grocery store adjacent to my office to ascertain whether it sells fresh salmon. If it does, I will procure some filets for dinner, which I'll commence preparing at 7:00 p.m." No, most lawyers would say in simple, idiomatic English that "I'm going to grocery store next to my office to see whether it sells fresh salmon. If it does, I'll buy some filets for dinner, which I'll start preparing at 7:00 p.m."

The benefits of simple writing are many

Lawyers, of course, shouldn't be afraid to use uncommon words if they fit the context of the sentence. Aristotle no doubt was right when he said that writers should strive for a mixed diction. But short, familiar, Anglo-Saxon words produce a more persuasive legal-writing style. Why? They reduce word counts. They quicken prose, and directly connect ideas. They don't make judges and clients feel stupid by forcing them to dictionaries. And, most importantly, they give readers a chance to comprehend unfamiliar, complex subject matter.

So try to follow Justice Thomas's advice about using 5-cent words to convey 10-dollar ideas, and leave the complicated Asiatic style to the next Faulkner. You won't win a literary award by keeping it simple, but your legal writing will undoubtedly be more effective. ↗

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Coach's Corner

Legal education rethink starts in the law firm

By Edward Poll

We have regularly discussed in these columns how law school does little to prepare young lawyers for practice realities in any size law firm. It has become increasingly clear that reality is catching up to law schools.

According to The New York Times, law school admissions for the upcoming 2013 academic year are headed for a 30-year low (down 20 percent from last year and 38 percent from 2010), a decline driven by student worries about rising tuition, equally soaring debt load and the prospect of unemployment after graduation.

A follow-up story in that same newspaper said that some are calling for radical changes to the legal education system, including cutting the curriculum, requiring far more on-the-ground training and licensing technicians who are not full lawyers.



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But this same story points out the real reason for the problem: "the vested interests of tenured professors tied to an antiquated system."

The dynamic between law schools and bar associations to maintain the profession's status quo suggests that tweaking tuition or curriculum is likely all the change that can be expected from the law school side. But this should not be a dead end for legal education.

Every law school graduate who is fortunate enough to have a law firm job should realize that keeping that job in today's business environment is a personal responsibility, not a function of having a certificate that proclaims one to be a J.D. Given that realization, there are certain steps for firms to help associates become self-reliant in furthering their own legal education.

The first step is **institutional**. Law firms increasingly are servicing clients

with teams (not just a single rainmaker), and adding associates to those teams according to a strategic plan. Training associates to develop business according to a personal marketing plan, and giving bonuses to those who get results, is essential. With this opportunity to grow business development opportunities, associates can develop a book of business that justifies making them partners.

The next step, too often neglected, is to help associates with **administrative staff**. Law firm administrators with marketing involvement can help young lawyers develop status reports and client surveys that effectively communicate to clients how the young lawyer is handling a matter and ask for input.

Administrators can also help set up an informal client visitation schedule, or other business development efforts using client relationship management (CRM) software and database systems. Administrators know that today's successful associates will be tomorrow's partners, so they will be

eager to help.

The final step is one of **attitude**. Associates should wean themselves away from relying on rainmakers and build the ability to develop business. The hurdle here is helping associates develop "resiliency," the ability to bounce back from criticism or rejection. Even successful sales people will frequently meet rejection, but their focus is always on achieving the next "yes" rather than dwelling on the last "no."

Given that associates typically have little or no exposure to this sort of thinking, the only way they will acquire it is building up confidence by doing, through opportunities that the firm provides. Associates who pursue such opportunities and the lessons they offer are the associates with the best chance to be tomorrow's partners. ↗

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