

2023 IMLA Annual Conference
La Quinta, California

Writing Tips for the Municipal Lawyer

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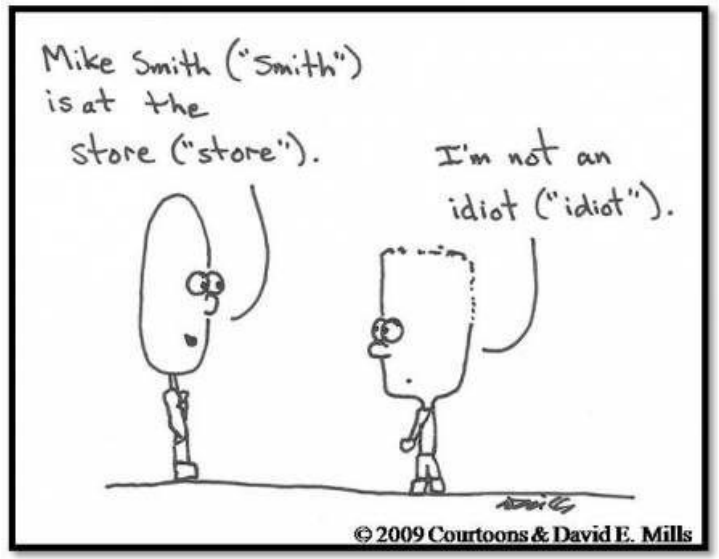
What we'll cover

- Legal Writing Follies
- Legal Writing Tips
  - Document Design
  - Organization
  - Sentence level
  - Eliminating clutter
- Resources
- Questions?

Difficult-to-read writing

- No white space
- Meandering paragraphs
- Complex sentence structures
- Passive voice & nominalizations
- Big words, jargon, or legalese
- Excessive abbreviations & defined terms
- Wordy





If lawyers talked like they wrote.

MIT News
ON CAMPUS AND AROUND THE WORLD

SUBSCI

Objection: No one can understand what you're saying

An MIT study identifies ways that lawyers could make their written documents easier for the average person to read.

Anne Trafton | MIT News Office
March 7, 2022

PNAS RESEARCH ARTICLE | PSYCHOLOGICAL AND COGNITIVE SCIENCES

Even lawyers do not like legalese

Eric Martínez[a,1], Francis Mollica[b], and Edward Gibson[a]

Edited by Susan Goldin-Meadow, University of Chicago, Chicago, IL; received February 17, 2023; accepted .

Across modern civilization, societal norms and rules are established and communicated largely in the form of written laws. Despite their prevalence and importance, legal documents have long been widely acknowledged to be difficult to understand for those who are required to comply with them (i.e., everyone). Why? Across two preregistered experiments, we evaluated five hypotheses for why lawyers write in a complex manner. Experiment 1 revealed that lawyers, like laypeople, were less able to recall and comprehend legal content drafted in a complex "legalese" register than content of equivalent meaning drafted in a simplified register. Experiment 2 revealed that lawyers rated simplified contracts as equally enforceable as legalese contracts, and rated simplified contracts as preferable to legalese contracts on several dimensions–including overall quality, appropriateness of style, and likelihood of being signed by a client. These results suggest that lawyers who write in a convoluted manner do so as a matter of convenience and tradition as opposed to an outright preference and that simplifying legal documents would be both tractable and beneficial for lawyers and nonlawyers alike.

Why is competent legal writing important?

Good writing helps your reader

- Clear, simple writing aids comprehension and recall.
- Your audience must read and process a lot of material. Make the reading part easy, so readers can use their mental energy to process your ideas.

Access to justice implications

- Laypeople encounter the law through you. E.g., jury instructions, contracts / terms of service, ordinances, and traffic tickets.
- Good writing helps the public understand rights and obligations.

The Rise of Plain Language Laws

MICHAEL A. BLASIE *

When lawmakers enacted 776 plain language laws across the United States, no one noticed. Apart from a handful, these laws went untracked and unstudied. Without study, large questions remain about these laws' effects and utility, and about how they inform the adoption or rejection of plain language.

This Article creates a conceptual framework for plain language laws to set the stage for future empirical research and normative discussions on the value of plain language. It unveils the first nationwide empirical survey of plain language laws to reveal their locations, coverages, and standards. In doing so, the Article creates a systematic method to find these laws. Then it coins a taxonomy of categories and terminology to describe their coverage and standards, thus creating a timely launchpad for future scholarship on domestic and international plain language laws. Along the way, the Article exposes the previously unknown scope of these laws—from election ballots and insurance contracts, to veterans housing and consumer contracts, to regulatory drafting and governor reports. That scope underscores the pervasive influence of plain language across public and private sectors, and over lawyers and non-lawyers alike. More-

180.545 Plain language standards; approval; fees.

(1) The agency to whom a consumer contract is submitted under ORS 180.540 shall review the contract to determine whether it complies with plain language standards. A consumer contract complies with plain language standards if it:

(a) Uses words that convey meanings clearly and directly;

(b) Uses the present tense and active voice whenever possible;

(c) Primarily uses simple sentences;

(d) Defines only those words that cannot be properly explained or qualified in the text;

(e) Explains at the beginning that the form is a contract between parties;

(f) Uses margins adequate for ease in reading; and

(g) Uses frequent section headings, in a narrative format, to help locate provisions.

(2) If the agency determines that the consumer contract complies with the standards in subsection (1) of this section, the agency shall certify to that effect to the seller or extender of credit who submitted the contract for review.

Document Design

Use short sections & useful headings



Don’t do this to your reader.

Dan Friedman
@judgedan65

It's your brief. But understand, if the table of contents in your appellant's brief looks like this, you have complied with Md. R. 8-504(a)(1) but forfeited the very first opportunity to tell the Court what your case is about. #AppellateTwitter

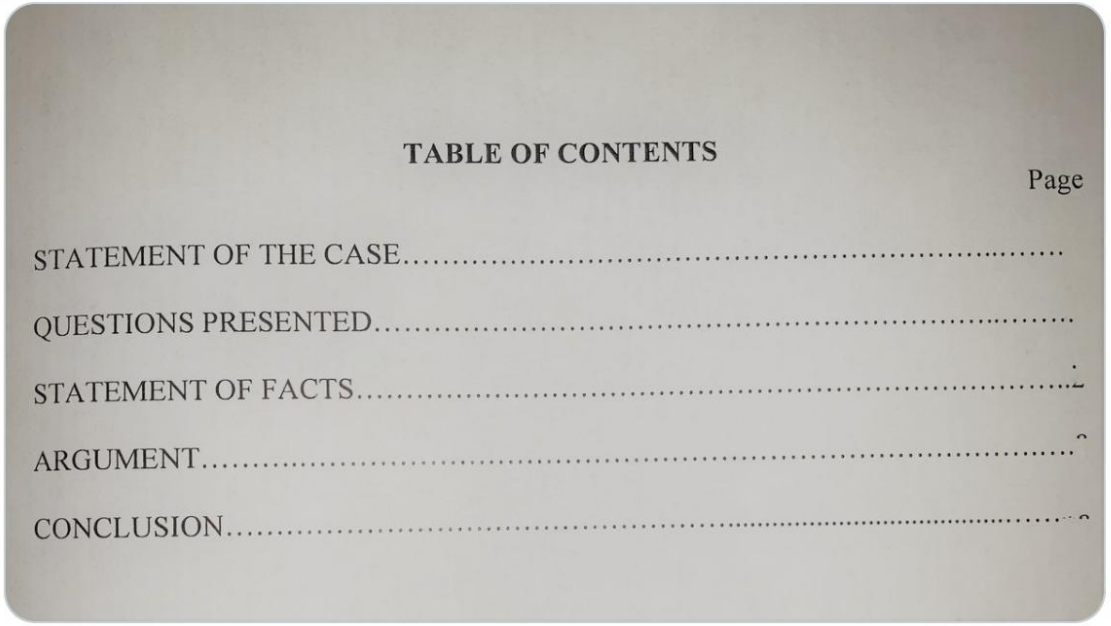


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QUESTIONS PRESENTED.....

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ARGUMENT.....

CONCLUSION.....

6:48 AM · Feb 11, 2021 · Twitter Web App

3. **Table of Contents** This must include page references.

Practice Tip: Use full sentences for your table of contents headings so that your table of contents reads as an outline of your case. Some judges read the table of contents first, and you should take advantage of the opportunity to lay out your case in a concise, logical roadmap. For example, rather than using a heading like "Argument," tell the reader what your argument is.

From the Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeals for the Ninth Circuit

STATEMENT OF THE CASE 16

A. The City of Los Angeles—like the County of Los Angeles and the State of California—enacts measures to keep tenants from being evicted while the COVID-19 pandemic required them to stay home. 16

B. Across the country, emergency tenant protections spawn a wave of litigation, including this case. 21

C. In line with virtually every other court to consider the issue, the district court dismisses landlord GHP's claim that the City's tenant protections effected a per se taking of its property, and dismisses the action entirely when GHP declines to amend its complaint to state a regulatory takings claim. 24

Short headings that aren't very helpful to the user	Informative headings capture the user's questions
§ 254.11 Indian Rights.	§254.11 How do the procedures in this part affect Indian rights?
§ 254.12 Applications.	§ 254.12 How do I apply for a grant under this part?
§ 254.13 Multi-tribal grants.	§ 254.13. When must I submit my application?
§ 254.14 Administrative requirements.	§ 254.14 Can a multi-tribal organization submit a single grant request?
§ 254.15 Appeals	§ 254.15 What special information do I need for an application by a multi-tribal organization?
	§ 254.16 Must each tribe in a multi-tribal organization submit certification forms and budgets?
	§ 254.17 If I receive a grant under this part, what requirements must I follow?
	§ 254.18 What reports must I submit after receiving a grant?
	§ 254.19 How can I appeal administrative actions under this part?

From the Federal Plain Language Guidelines

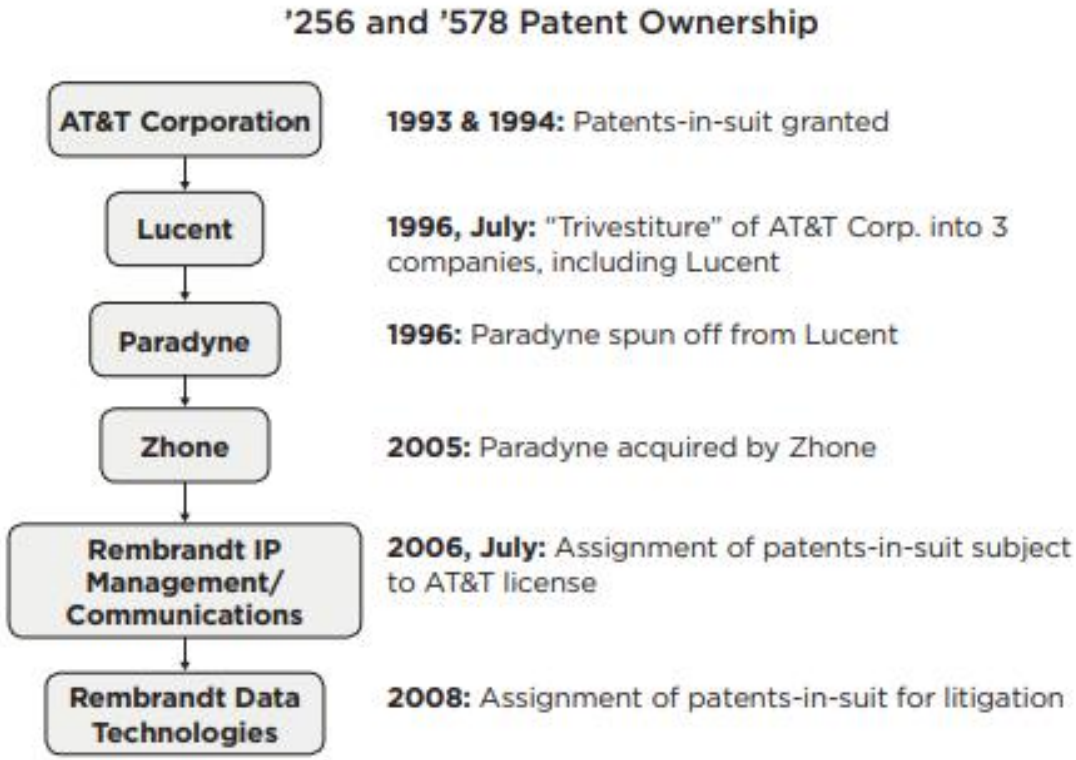
Use lists (bullet points or numbering)

You can qualify for benefits under Section 43 if you are sixty-four or older and unable to work, and that section also provides benefits in the event that you are blind in one eye, or both eyes, or are permanently disabled in the course of your employment.

(From Wydick, *Plain English for Lawyers* (5th ed. 2005) "Arrange Your Words with Care," ch. 6, p. 45.)

Use Graphics, Charts, or Tables

The ownership genealogy of the ’236 and ’578 patents is documented in the chart below.



Rembrandt Data Techs., LP v. AOL, LLC, 641 F.3d 1331, 1333–34 (Fed. Cir. 2011)

Organization

Develop a knack for summarizing your main points. Place them first.

GERALDINE TYLER, PETITIONER *v.* HENNEPIN COUNTY, MINNESOTA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May 25, 2023]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Hennepin County, Minnesota, sold Geraldine Tyler's home for $40,000 to satisfy a $15,000 tax bill. Instead of returning the remaining $25,000, the County kept it for itself. The question presented is whether this constituted a taking of property without just compensation, in violation of the Fifth Amendment.

STATEMENT OF THE CASE

Complainant Bola Chin filed a complaint with the City of Los Angeles Department of Animal Services ("LADAS") on June 15, 2016 in which she alleged that two of Appellant's dogs attacked her while she was on Appellant's property. (CT 75.) On June 15, 2016, the LADAS issued a notice to Appellant to confirm that his dogs were licensed and spayed or neutered and that their rabies vaccinations were current. (CT 71.) After an administrative hearing on the matter on September 11, 2017, for an unknown period of time, at which Appellant did not appear because he did not receive the notice purportedly sent to him, the LADAS Hearing Examiner issued a recommendation that Appellant's dogs be designated as dangerous and euthanized. (Exhibit A to Declaration of Norma Ann Dawson ("NAD Dec.")) The LADAS General Manager affirmed the Hearing Examiner's recommendation. (Exhibit B to NAD Dec.)

On September 27, 2017, Appellant filed a writ for administrative mandamus with the Los Angeles Superior Court. (CT 6-17.) On September 28, 2017, Appellant filed an ex parte application for a temporary restraining order to stay the execution of his dogs Sophy and Nana pending the trial court's consideration of his writ of administrative mandamus. (CT 18-30.) On September 28, 2017, the trial court granted Appellant's request for an order that, during the pendency of the writ of administrative mandamus proceeding, Sophy and Nana would remain alive. The trial court denied Appellant's request for an order that (a) the LADAS would refrain from acting on its September 15, 2017 decision to designate Appellant's dogs Sophy and Nana as dangerous animals, (b) immediately seize and impound Sophy and Nana, and (c) prevent Appellant from keeping Sophy and Nana at his home within his property's walls with securely locked gates during the pendency of the writ of administrative mandamus. (CT 31-34.)

INTRODUCTION

Census worker Bola Chin entered a front yard through an unlocked gate, walked up to a house, rang the doorbell, and, in response, was mauled by petitioner and appellant Francisco Martinez's two unlicensed dogs. There were no dog-warning signs on the fence surrounding the yard. These are facts supported by substantial evidence, so after a hearing at which Chin gave sworn testimony—and at which Martinez failed to appear—the Department of Animal Services deemed the dogs dangerous pursuant to the Los Angeles Municipal Code and impounded them for euthanasia.

The trial court denied Martinez a writ of mandate that would have overturned that decision, because the evidence in the record supports it. Martinez now appeals from the denial of his writ petition, but there is simply no prejudicial error to appeal.

JUSTICE KAGAN delivered the opinion of the Court.

This case is about dog toys and whiskey, two items seldom appearing in the same sentence. Respondent VIP Products makes a squeaky, chewable dog toy designed to look like a bottle of Jack Daniel's whiskey. Though not entirely. On the toy, for example, the words "Jack Daniel's" become "Bad Spaniels." And the descriptive phrase "Old No. 7 Brand Tennessee Sour Mash Whiskey" turns into "The Old No. 2 On Your Tennessee Carpet." The jokes did not impress petitioner Jack Daniel's Properties. It owns trademarks in the distinctive Jack Daniel's bottle and in many of the words and graphics on the label. And it believed Bad Spaniels had both infringed and diluted those trademarks. Bad Spaniels had infringed the marks, the argument ran, by leading consumers to think that Jack Daniel's had created, or was otherwise responsible for, the dog toy. And Bad Spaniels had diluted the marks, the argument went on, by associating the famed whiskey with, well, dog excrement.

The Court of Appeals, in the decision we review, saw things differently. Though the federal trademark statute makes infringement turn on the likelihood of consumer confusion, the Court of Appeals never got to that issue. On the court's view, the First Amendment compels a stringent threshold test when an infringement suit challenges a so-called expressive work—here (so said the court), the Bad Spaniels toy. And that test knocked out Jack Daniel's claim, whatever the likelihood of confusion. Likewise, Jack's dilution claim failed—though on that issue the problem was statutory. The trademark law provides that the "noncommercial" use of a mark cannot count as dilution. 15 U. S. C. §1125(c)(3)(C). The Bad Spaniels marks, the court held, fell within that exemption because the toy communicated a message—a kind of parody—about Jack Daniel's.

Today, we reject both conclusions. The infringement issue is the more substantial. In addressing it, we do not decide whether the threshold inquiry applied in the Court of Appeals is ever warranted. We hold only that it is not appropriate when the accused infringer has used a trademark to designate the source of its own goods—in other words, has used a trademark as a trademark. That kind of use falls within the heartland of trademark law, and does not receive special First Amendment protection. The dilution issue is more simply addressed. The use of a mark does not count as noncommercial just because it parodies, or otherwise comments on, another's products.

Sentences

Use simple sentence structures

- Start with your main idea (not an exception).
- Express one idea in each sentence.
- Break up complex ideas into smaller units.
- Keep the subject, verb, and object close together.

Use Active Voice

Use this construction when possible:

Subject + verb + object.

What is this example trying to convey? How would you revise it?

> Testimony was heard from the plaintiff and from three witnesses on behalf of the corporation.

How would you revise?

The court, in finding that Rudy Parks was acting more as a school employee than as a police officer in searching Jamie Robinson, ruled that a school official's primary role is not law enforcement.

SEC. 53.49. DOGS - DOG DEFECATION TO BE REMOVED BY OWNERS.
(Amended by Ord. No. 183,271, Eff. 11/14/14.)

It shall be unlawful for the owner or person having custody of any dog to fail to immediately remove and dispose of in a sanitary manner, by replacing in a closed or sealed container and depositing in a trash receptacle, any feces deposited by such dog upon public or private property, without the consent of the public or private owner or person in lawful possession of the property, other than property owned or controlled by the owner or person having custody of such dog. The provisions of this subsection shall not apply to a blind person being accompanied by a guide dog.



Don’t turn verbs into nouns

Verb – Noun	Verb
The **implementation** of the plan by the group was successful.	The group **implemented** the plan successfully.
He made a **discovery** of the lost shipwreck.	He **discovered** the lost shipwreck.
The agency conducted an **investigation**.	The agency **investigated**.
They made the investment in Apple stock after the announcement.	They invested in Apple stock after the announcement.

Use simple words

- Use ten-cent words instead of ten-dollar words. Or “Put a ten-dollar idea in a five-cent sentence.”
- Try to write as you would speak. (How would you sound if you read your writing to another person?)

How would you revise?

Complicated word	Replace with?
acquire/procure	
adjacent/contiguous to	
ameliorate	
commence	
endeavor	
erroneous	
elucidate	
inform	
reside	
utilize	
transmit	
subsequent	

Avoid Latin and Legalese

ab initio (from the start)

arguendo (for the sake of argument)

inter alia (among other things)

gravamen (crux, gist)

sua sponte (on its own)

sui generis (unique)



Hereinafter

Heretofore

Aforementioned

Wherein

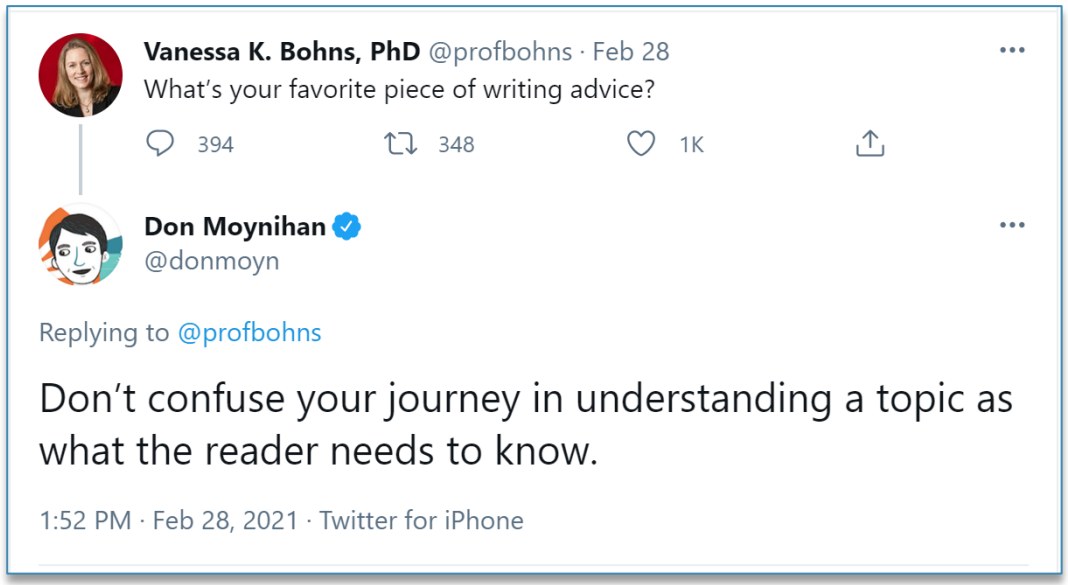
Thereafter

Nothwithstanding

How I feel after I mix in a “notwithstanding” into something I’m writing:



Eliminate Clutter



> "I didn't have time to write a short letter, so I wrote a long one instead."
>
> — ***Mark Twain***

Ask yourself, "Why am I including this information"?

- You are asking the reader to remember a ton of information.
  - For example, consider whether you need precise dates, or whether you're better served by "soon after" or "later that year."
  - Or, another example: Do you need textual citations? Why?

On December 4, 2018, Appellant filed his brief in support of writ of administrative mandamus, Verified Administrative Record, and Administrative Hearing Certified Transcript. (CT 45-62; Verified Administrative Record: CT 63-99; Administrative Hearing Certified Transcript: CT 100-127.) On December 7, 2018, the LADAS filed its opposition to Appellant's petition for writ of administrative mandamus. (CT 128-136.) On December 13, 2018, Appellant filed his response to Respondents' opposition for writ of administrative mandamus. (CT 137-150.) On December 14, 2018, Appellant filed his amended response to Respondents' opposition for writ of administrative mandamus. (CT 151-167.) On March 25, 2019, Appellant filed his notice of lodgment of corrected updated Verified Administrative Record (with video) and declaration of Marc Robinson in support. (CT 170-172.) [1]

On April 11, 2019, the hearing on Appellant's petition for writ of administrative mandamus proceeded. The trial court prepared a tentative ruling, which ruling the trial court adopted after argument by counsel for Appellant and Respondent. (CT 173-183.)

On April 22, 2019, Appellant moved ex parte for an application staying execution of the trial court's judgment pending appeal. (CT 189-204.) The trial court found that it had jurisdiction to rule on the matter and granted the ex parte application. (CT 205.)

Eliminate excessive prepositions

How would you rewrite these?

This Court did not err in issuing its order of dismissal of the claims of Plaintiff.

One way in which a private party can act preemptively to protect the enforceability of the rest of the provision of a contract, in the face of one void provision, is to insert a severability clause.

Eliminate Compound Constructions

Compound	Simple
“by means of”	
“for the purpose of”	
“for the reason that”	
“in order to”	
“with reference to”	

Eliminate Block Quotes

As discussed in *International Shoe*:

> Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him. . . . But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Eliminate Block Quotes

The following quotes reveal the Founding Fathers' thoughts on freedom of speech:

> For if men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.

George Washington, March 15, 1783.

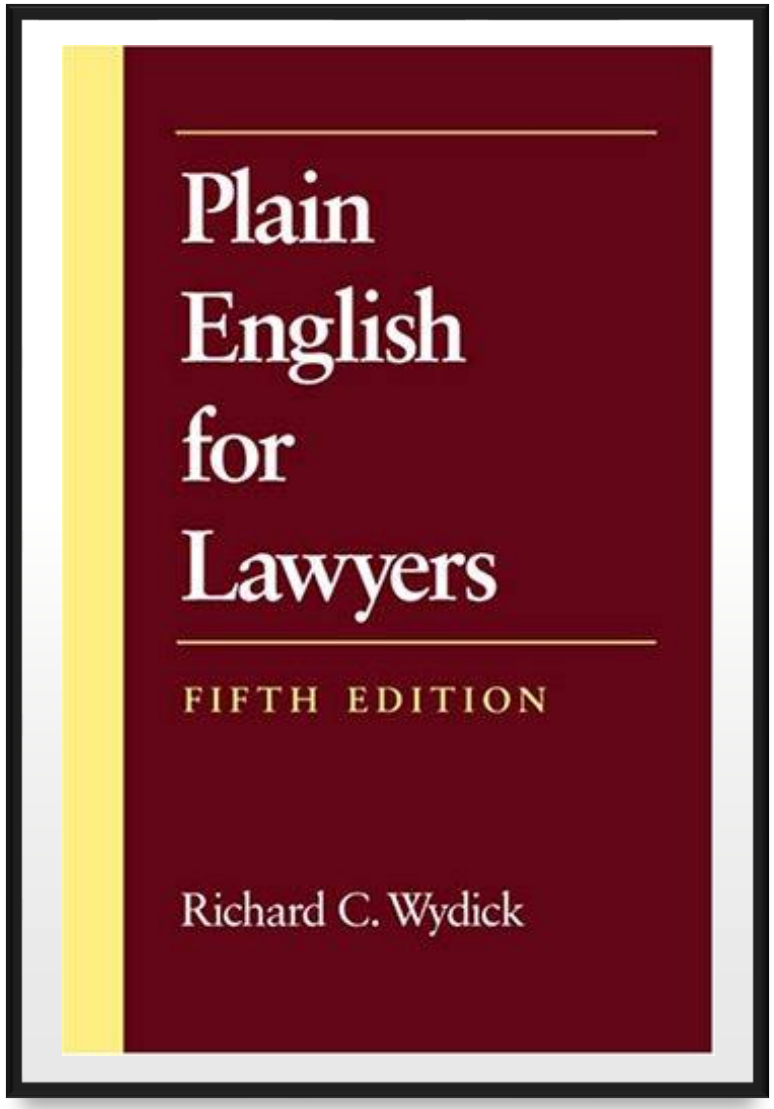
> Whoever would overthrow the liberty of a nation must begin by subduing the free acts of speech.

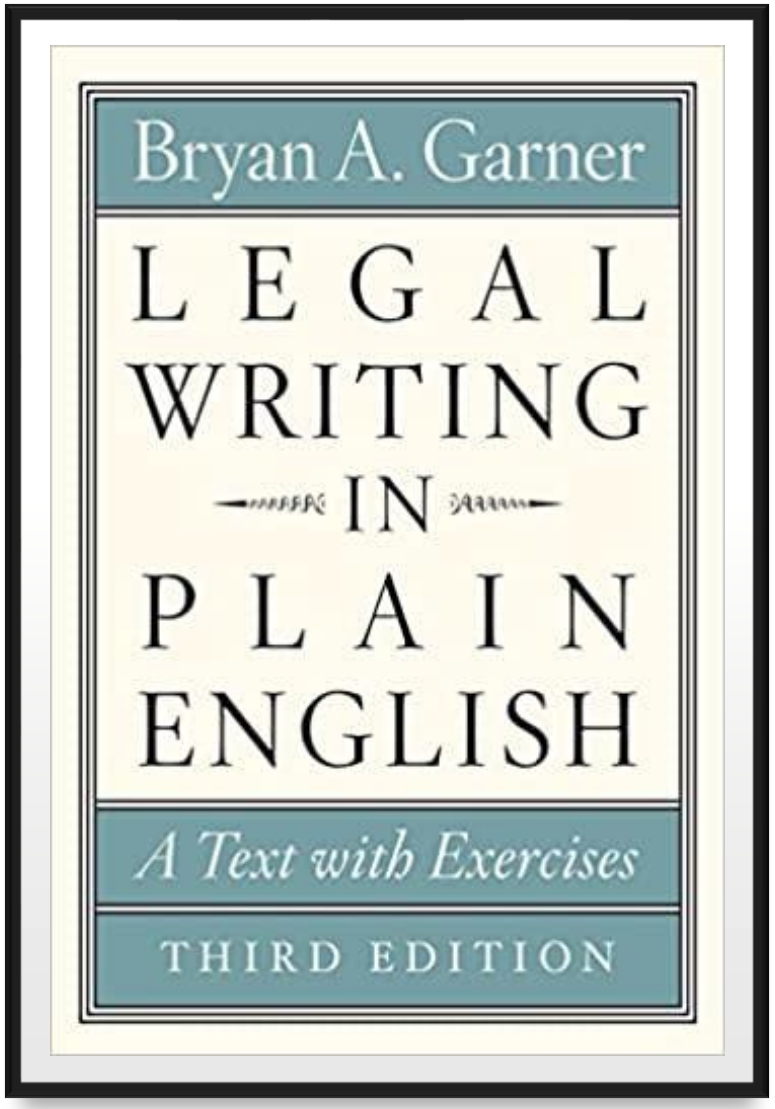
Benjamin Franklin, *Letters of Silence Dogwood*.

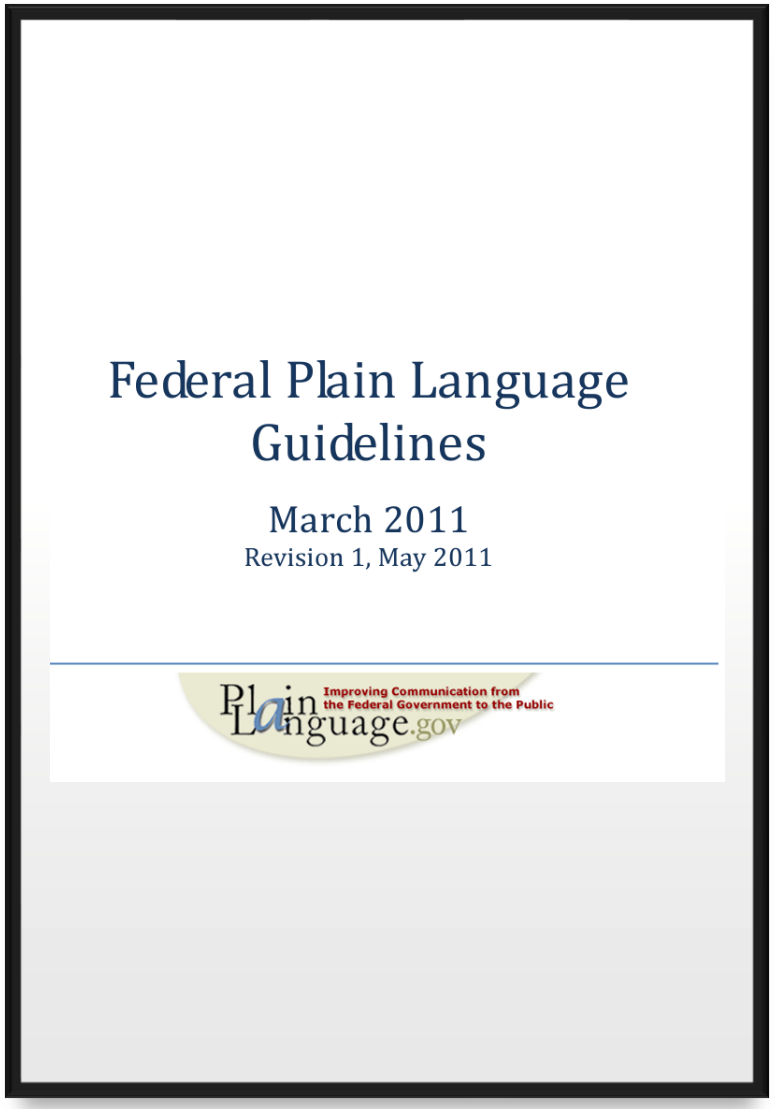
> Reason and free inquiry are the only effectual agents against error.

Thomas Jefferson.

(from *Missouri v. Biden*, Case No. 3:22-CV-01213 (Doughty))


Plain
English
for
Lawyers
FIFTH EDITION
Richard C. Wydick


Bryan A. Garner
LEGAL
WRITING
IN
PLAIN
ENGLISH
A Text with Exercises
THIRD EDITION


Federal Plain Language
Guidelines
March 2011
Revision 1, May 2011
PlainLanguage.gov
Improving Communication from the Federal Government to the Public

Questions?