

On Writing Well

By Daniel U. Smith and Valerie T. McGinty

William Zinsser, America's most influential writing teacher, died on May 12, 2015. He was 92.

This article commemorates Mr. Zinsser and his popular writing guide, "On Writing Well." This book, published in 1976, has sold over 1.5 million copies. The book's success is attributable to its usefulness and its original insights on how and why to write plain English.

For lawyers seeking to persuade judges, "On Writing Well" is an essential reference. To write a motion or brief that will persuade a busy judge is a daunting challenge – requiring clarity on a technical subject where the decision will rest, not on our oral advocacy, but on our writing.

"On Writing Well" offers more than the curt mandates found in Strunk and White's "The Elements of Style." Mr. Zinsser provides colorful and detailed observations on what is required of the writer to keep the reader interested and persuaded. What makes these observations engaging are the strength of his convictions and the humor of his commentary.

Mr. Zinsser's main message is that clarity is achieved by eliminating clutter. In targeting clutter as a key culprit, Mr. Zinsser's aim is dead-on.

Clutter "blunts the painful edge of truth." (P. 14.) Clutter lurks in "the laborious phrase that has pushed out the short word that means the same thing." (P. 14.) "Clutter is the ponderous euphemism that turns a slum into a depressed socioeconomic area, garbage collectors into waste-disposal personnel and the town dump into the volume reduction unit." (Pp. 14-15.)

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To overcome clutter, Mr. Zinsser urges us to make radical deletions: "Look for the clutter in your writing and prune it ruthlessly. Be grateful for everything you can throw away." (P. 17.) "Most first drafts can be cut 50 percent without losing any information or losing the author's voice." (P. 17.) Make each revision "tighter, stronger and more precise, eliminating every element that's not doing useful work." (P. 11.) "Writing improves in direct ratio to the number of things we can keep out of it that shouldn't be there." (P. 13.) "Writing is like a good watch – it should run smoothly and have no extra parts." (P. 85.) Mr. Zinsser even reads his drafts "aloud, and [is] always amazed at how much clutter can still be cut." (P. 11.)

Mr. Zinsser's campaign against clutter is appropriate for legal writers. Starting in law school, most lawyers learn to inflate their phrases and sentences and to include colorful information (even if trivial) to make the argument sound more profound.

The ornate writing of Justice Cardozo is a good example. Justice Cardozo's

complex constructions and detours can be a siren song that captivates many ill-advised law students. For example, in the opening paragraph of *Palsgraf v. Long Island R. Co.* (N.Y. 1928) 162 N.E. 99 (the case of the exploding fireworks), Cardozo introduces two men who run to catch a departing train. He adds: "One of the men [*not* the one carrying the fireworks] reached the platform of the car without mishap, though the train was already moving."

"So what?" the reader may rightly ask. "Do the acts of the man *not* carrying fireworks figure in the legal analysis?" Not at all. That sentence is pure clutter.

Mr. Zinsser warns against the tendency to "inflate and thereby sound important" (p. 7), a tendency that pervades legal writing. A lawyer might write: "The evidence in the record in this case showed that he said . . ." But this can be cut to "He said . . ." Everything else is implicit.

The phrase "in many cases the engines were defective" can be cut: "many engines were defective." "Pursuant to the provisions in the policy" can be cut to "under the policy." The phrase "imposed restrictions precluding the use of" can be cut to "banned." "The fact that he had not succeeded" can be cut to "his failure." "In a hasty manner" can be cut to "hastily." "She has been involved in the investigation of" can be cut to "She investigated . . ." "The expert was of the opinion that" can be cut to "The expert opined." "She was able to draw conclusions as to" can be cut to "she concluded."

In most legal writing, similar bloated phrases abound. We could fill a book with them, though not a book we would want anyone to read.

Such inflated writing offends judges as well as Mr. Zinsser. Justice Antonin Scalia



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advises us to write with “brevity” to “make the court’s job easier.” In his view, “[e]very word that is not a help is a hindrance because it distracts. A judge who realizes that a brief is wordy will skim it; one who finds a brief terse and concise will read every word.” (A. Scalia and B. Garner, *Making Your Case: The Art of Persuading Judges* (2008) p. 81.)

Similarly, Ninth Circuit Judge Harry Pregerson warns that “unnecessarily long briefs are counterproductive. They clog a good argument with excess verbiage. They tend to lose their persuasive edge as well as their credibility.” (H. Pregerson, “The Seven Sins of Appellate Brief Writing and Other Transgressions,” 1986 *UCLA Law Review* 431, 434.)

Mr. Zinsser pins responsibility for the reader’s difficulties on the writer: “If the reader is lost, it’s usually because the writer hasn’t been careful enough.” (P. 9.)

Judges likewise hold lawyers responsible for writing in a style that does not measure up. Chief Justice Roberts reportedly believes that “brief writing conveys not only your argument to the court, but it also conveys a sense of your credibility and the care with which you put together your case.” (Kornblut, *In Re Grammar, Roberts’s Stance is Crystal Clear*, *New York Times* (Aug. 29, 2005) p. A13 (Nat’l Ed.)) Prof. Irving Younger put it more bluntly. When a lawyer fails to write with clarity, “the lawyer’s language is a confession of incompetence.” (I. Younger, *Persuasive Writing* (1990) p. 2.)

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Mr. Zinsser’s remedy for such “incompetence” is relentless rewriting. “Rewriting is the essence of writing well; it’s where the game is won or lost.” (P. 84.) “The newly hatched sentence almost always has something wrong with it. . . . [C]lear writing is the result of a lot of tinkering.” (Pp. 84-85.) “I love to rewrite. I especially like to cut: to press the DELETE key and see an unnecessary word or phrase or sentence vanish. . . . With every small refinement. . . I’m coming nearer to where I would like to arrive, and when I finally get there I know *it was the rewriting*, not the writing, that won the game.” (P. 88.) ■

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