

The Readable Brief: Three More Tips

by Hon. Robert J. Jones, J.S.C.¹

My last column highlighted three tips for improving your brief's readability. I won't repeat what I said about how important readability is to brief writing, but I will say that a readable brief makes a huge difference from a judge's perspective. I spend my time considering the argument rather than trying to decipher it. So, with that in mind, here are three more tips:

1. Be direct

Too often, legal writers think they have to back into what they say. I'd urge the opposite. Be direct. In *The Elements of Style*,² Strunk and White tell the book's readers to "[m]ake definite assertions." One way to do this is to look for phrases that contain the word *not*. Then, see if you can replace them with phrases stated in positive form. In other words, rather than tell them what is not, tell your readers what is.³ Here are some examples:

Before

Jimenez could not remember his name.

After

Jimenez forgot his name.

Before

Corson did not pay attention to the red light.

After

Corson ignored the red light.

While the word *not* offers a clue to help you find phrases that need work, you'll improve your writing's readability if you look for other phrases stated indirectly too. Here's another example:

Before

Flynn was less than truthful when she told police the car was hers.

After

Flynn lied to police when she said she owned the car.

Notice how the improved version is shorter and more direct—things that make your reader's job easier and your writing stronger.

2. Define words or phrases your reader may not know

In legal writing, we often borrow words and phrases used by our clients. Whether it's medical terms, the jargon contained in corporate contracts, or the slang used by criminal defendants, that language—by necessity—seeps into our briefs and other documents.

Yet think about it from the reader's perspective. What does the judge do when encountering the word *spondylolisthesis* for the first time? Do you really want the judge to stop reading your brief and run to a medical dictionary or ask Google? Does that type of interruption help?

I remember when I started handling drug-court cases. I'd heard of a *speedball*, but I didn't know exactly what it was. Luckily, the attorney who wrote the brief I was reading helped me out, saying how the defendant "died of an overdose after doing a speedball—a mixture containing cocaine and heroin." By defining a term that might be alien to me, the attorney made my job as a reader easier.

I urge you to do the same. When you think a reader may not know a word or phrase, define it. Place the definition in parentheses, set it off with dashes, or place it in a separate sentence. And while I'm not crazy about footnotes, you can even place a long, cumbersome definition there if need be. You'll make your reader's job easier, which ultimately benefits your client.

3. Check out your readability stats

Microsoft Word contains a little-used feature I just started experimenting with. It's called "Readability Statistics." If you go into the Options menu under the File tab, you can activate it by going to the Proofing ribbon and checking the box for it. Then, when you run a Spell Check (under the Review tab), the readability statistics for your document pop up at the end of the check.

While the feature gives you ten different statistics, I found some more helpful than others. It's good to know your average words per sentence and sentences per paragraph. I've written about these averages before. You're probably doing a good job if you average between 20 and 25 words per sentence and three to eight sentences per paragraph. But remember, these are just suggestions, not rules.

The feature also shows you the percentage of passive-voice sentences. Try to drive that number down as low as possible. If you're consistently above 20%, you probably need to work on converting passive voice to active voice when you edit. Active voice is clearer, more direct, and more concise. While passive voice has its place, you should prefer active over passive, at least most of the time.

The Readability Statistics also give you two other helpful scores: the Flesch Reading Ease Score and the Flesch-Kincaid Grade Level Score. The Flesch Reading Ease Score grades your writing from 0 to 100. It calculates the score using average sentence

length and average number of syllables per sentence. The higher your score, the more readable your writing.

But be careful. Because we use syllable-rich legal terms and write about complex subjects, legal writing tends to come out low on the scale. For fun, I ran the score for a recent expungement opinion I wrote. It scored 44.9, which would be considered a “difficult” read.⁴ After stripping out the headnotes, I did the same for opinions by Chief Justice John Roberts and Justice Elena Kagan—two of the best legal writers around—and got similar results. I suggest you use this score only to see if your writing is getting easier or harder to read over time. You may also want to check the score before and after editing to see if the score improves.

The Flesch-Kincaid Grade Level Score works the same way, except the score shows a school-grade level. For example, if the grade level is eight, a reader having finished eighth grade would be able to read and understand what you wrote. Again, you need to be careful. The scores for legal writing will be higher than writing for general topics. If you’re trying to improve your writing’s readability, use the score to see if you’re getting better or worse. Your readability will improve the more you drive the number down.

¹ Thank you to my former law clerk, Sam Howie, Esq., for his help with this article.

² William Strunk, Jr. & E.B. White, *The Elements of Style* 19 (4th ed.).

³ *Id.* at 20.

⁴ A chart breaking down the scores is available at <https://writingstudio.com/blog/flesch-reading-ease/> (accessed 8/22/21).