"The law is a seamless web," law professors are fond of reminding their students. The lightest touch on any strand will send vibrations through the entire intricate structure. Every legal issue, rule, and theory is integrally connected; thus attention to any part affects the whole. Ironically, the metaphor's appropriateness extends beyond this initial image since the slightest vibrations running through even the most beautiful web will alert the waiting spider—the beauty disguises a deadly trap.

Primary victims are first year law students who rapidly become obsessed with the intricate system of legal relationships. Intent on making connections, on leaving nothing untouched, they often ensnare themselves in webs of words and are unable to regain the freedom of clarity. For these students, "seamless" has come to mean an absence of clear reference points and a lack of linear progression, resulting in their inability to separate the major issues from the less important ones. Their writing reflects this entanglement. In fact, the compulsion to discuss simultaneously all threads of these interwoven legal relationships is a major source of law students' writing problems and appears at every level of composing, from the argument's overall organization to the structure of each sentence. This pattern parallels William Faulkner's famous admission: "I have a compulsion to say everything in one sentence because I may not live long enough to have two sentences." Fortunately, Faulkner was a novelist, not a lawyer.

Consider the issue statement from this office memorandum written by a first year student:

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Can it be determined as a matter of law whether Nelson Rayman controlled the manner and method of the renovation work at One Traverso Street, thus making him an independent contractor and absolving Jan Wharton from liability for injuries sustained by Revere, a third party lawfully on the premises, and even if Rayman performed as an independent contractor, could Wharton still be liable for Revere's injuries if she did not carefully select Rayman for this job or if the renovation work was inherently dangerous?

In this exhaustive sentence, the writer attempts to include all the relevant facts and legal terms that might bear on the case. Though the student protects all flanks, he loses the clarity of the sentence itself. But he is not totally at fault. His professors and his T. A. have told him that he must take into consideration all aspects of the law and make every statement legally inviolate—hence the string of qualifying phrases and clauses. Further blame falls squarely on the examples available to the students: the volumes of professional legal writing contained in law libraries. For instance, the following sentence from an actual case appears in a textbook discussion of civil liability:

For, if some limitation must be imposed upon the consequences for which the negligent actor is to be held responsible—and all are agreed that some limitation there must be—why should that test (reasonable foreseeability) be rejected which, since he is judged by what the reasonable man ought to foresee, corresponds with the common conscience of mankind, and a test (the "direct" consequence) be substituted which leads to nowhere but the never-ending and insoluble problems of causation.²

It's no wonder students have difficulty not only understanding the law, but also learning to express its principles clearly. In fact, the previous illustrations give credence to Jonathan Swift's satiric description of lawyers as "a society of men among us, bred up from their youth in the art of proving by words multiplied for that purpose that white is black and black is white."³ Words "multiplied for that purpose" is the important phrase here. While manipulation of language provides a viable means of argument in the courtroom, certainly there is a difference between carefully choosing words for their persuasive effect and intentionally obstructing clarity ("multiplying words") for the sake of retaining the mysteries of the legal system. Such a defense for legal jargon cannot stand.

Removing these obstructions to clear communication requires attention to many levels of the composing process, from the overall
organizational pattern to the structure of each paragraph and the composition of individual sentences. Since most lawyers reason inductively (that is, moving from specifics to a general conclusion), a parallel approach to achieving clarity in legal writing begins with the sentence. A close look at what happens when a law student—or a veteran lawyer—has difficulty writing clear sentences reveals a common cause for such problems: noun dependency.

Law school steeps the students in nouns. From their first year of legal training, lawyers are taught to think in nominative terms, especially in abstract nouns labeling concepts rather than naming definite people or objects. Because of this thought pattern, much written law progresses from one legal term to another, with little attention to verbs or other structural possibilities reflecting clear and interesting linguistic relationships. Even the longest legal sentences sacrifice all other parts of speech to the dominant noun. Certainly the example of professional writing given above illustrates this pattern. In that one sentence on civil liability, there are 20 nominatives to 10 verbs, and only two of the verbs ("corresponds" and "leads") are strong enough to stand alone without auxiliaries. (Interested grammarians will note that none of the active verbs are transitive—this writer works at negating direct action.) The prime "movers" of such legal writing are abstract nouns, not verbs, a paradox at the root of many problems.

In their first year of law school, most students fall victim to five noun-related difficulties at the sentence level:

1) Addiction to the passive voice
2) Overuse of the verb "to be"
3) Nominalization
4) Overly embedded sentences
5) Repetition of sentence structure

ADDICTION TO THE PASSIVE VOICE

The passive voice is insidious in the way it takes root, compounds itself, and gradually strangles the life out of an argument. Simply defined, a verb is passive when its subject remains inactive but is acted upon by an outside agent: "Rayman's status will be determined by the court." In this example, the status will not act, the court will act upon it. Since the subject ("status") is not the initiator of the
verb's action, the sentence is passive. Written more efficiently in the active voice: "The court will determine Rayman's status," the sentence is more direct. But students thinking primarily about legal terminology are likely to move "status" to a position foremost in their sentences. In a few instances the abstract noun legitimately should appear first, but in most cases the sentence is more dynamically clear in the active version.

Because law students are grappling with legal concepts, their first written drafts naturally progress by linking abstract terms to abstract term, a process ready-made for the passive voice. The resulting argument is twice-removed from the reader, once by its conceptual nature, and once more by the passive construction.

A good edit will correct this problem. After the student completes the "thinking draft" that likely contains a majority of sentences beginning with passive terms rather than active agents, a stringent edit prevents tangled prose, such as the following, from slipping through to the final draft:

Specific aspects of the renovation work would be controlled by Rayman as clearly designated in the written contract entered into by Rayman and by the owner, Wharton.

Instead of the more direct version:

Rayman and Wharton's written contract clearly gave Rayman control over specific aspects of the renovation work.

When students concerned with legal principles and terminology are exploring this territory for the first time, they often use the passive out of fear—fear of directness that sets them up as clear targets for attack. Another attraction of the passive voice is the students' false impression that it sounds more formal and therefore more intelligent. Add to this their bad habit of overusing the verb "to be," a verb that often sets the stage for the passive, and the reasons for the addiction to this construction become apparent.

OVERUSE OF THE VERB "TO BE"

Connecting legal terms creates a dependence on verbs such as "is," "are," "was," and "were" to link the important concepts. In the
following example, the writer unimaginatively links legal nouns via forms of "to be," creating not only unnecessary passives, but lackluster prose as well:

Virginia courts recognize that the landlord's duty is coextensive with the invitation. The extent of the invitation has certain limitations about where the invitee is expected to go, and the area which is off-limits should be adequately marked. The conditions surrounding the renovation site strongly support that notice was given to Revere not to enter.

Removal of the "to be" verbs more vividly focuses the paragraph:

Virginia courts recognize that the landlord's duty coextends with the invitation. Although the invitation implies where the invitee may go, the off-limits area should have adequate markings. The renovation site's surrounding conditions clearly gave Revere notice not to enter.

Since the passive requires an auxiliary form of "to be," excessive use of "is," "are," "was," and "were" usually results in an outbreak of the passive voice, and it also causes another problem: nominalization, sometimes called "nounism."

**NOMINALIZATION OR "NOUNISM"**

Students conscious of avoiding overuse of the verb "to be" will not write many passive sentences. Neither will the forewarned student fall into the trap of transforming verbs into nouns, a habit that lengthens sentences and further obstructs clarity. If the typical first year law student had written the preceding sentence, it might serve as a prime example of nominalization:

The trap of transforming verbs into nouns will not often be fallen into by the forewarned student, and thus the habit of nominalization in which sentences are lengthened and further obstructions are placed in the path of clarity is avoided.

It's important to note that nounism doesn't always require the verb "to be." Good writers check the copy to see if they can rewrite in leaner form any noun or adjective containing the seed of a verb. For example, the sentence: "A common theme throughout the four Michigan cases analyzed is the courts' reliance on the legislators' intent,"
becomes: "In all four of these Michigan cases, the courts relied on the legislators' intent."

These three potential problems—the passive voice, the verb "to be," and nominalization—have a common solution. Since every sentence contains at least one verb (and most have more than one), their aggregate effect is powerful. If writers pay more attention to these verbs instead of concentrating primarily on nouns, clarity will improve by at least 50%. The percentages improve even more dramatically if law students correct two additional noun-related problems at the sentence level: overly embedded sentences and repetitive structures.

OVERLY EMBEDDED SENTENCES

The most persuasive legal writing consists of skillfully manipulated subordinate (dependent) clauses linking the major issues contained in the main clause.* Here, too, lies a potential trap for novice legal writers. In their attempts to include all facets of each issue, law students often embed several qualifying constructions within the mainframe of the sentence. In many cases, this method of subordinating information is efficient, but writers run the risk of stringing together so many dependent clauses and phrases that they obscure the important ideas. Unfortunately, much written law sets precedent for this awkward prose. Consider the following example—filled with strings of qualifiers—taken from the Michigan Worker's Compensation Act (Mich. Comp. Laws Ann. §418.131):

"Employee" includes the person injured, his personal representative and any other person to whom a claim accrues by reason of the injury to or death of the employee, and "employer" includes his insurer,

* QUICK REVIEW:

Main Clause - a group of words containing a subject + verb expressing a complete thought.

Subordinate Clause - a group of words containing a subject + verb not expressing a complete thought.

Phrase - a group of words used as a single part of speech and not containing a verb.
a service agent to a self-insured employer, and the accident fund insofar as they furnish, or fail to furnish, safety inspections or safety advisory services incident to providing workmen's compensation insurance or incident to a self-insured employer's liability servicing contract.

The number of explanatory lists between the main subjects of that sentence ("employee" and "employer") obscures the primary point. Rewritten in an easier to read format, the sentence makes its point more clearly:

"Employee" includes (a) the injured person, (b) the injured person's personal representative, (c) anyone who has a claim resulting from the employee's injury or death.

"Employer" includes (a) the employer's insurer or service agent, (b) the accident fund insofar as they do or do not furnish safety inspections and safety advisory services relevant to worker's compensation insurance or a liability servicing contract.

The revised version illustrates an important factor. Note that efficient prose does not always mean shortened sentences. Although many legal writers need to reduce the number of words in their sentences, writing's major goal is to communicate clearly. In some instances, it takes more words in varied formats to increase the readability, even if it means unraveling a tightly woven sentence. The above example shows the benefit of using tabulation form (lists) to make it easier for the reader to grasp the concept with a single effort of mind. It's much easier to read information presented in a list than it is to wade through long series of explanatory phrases.

Legal writers often tangle their thoughts in this fashion when they string together qualifying prepositional phrases. Usually, sentences containing these unnecessary phrases reflect the writer's inefficient habit of thinking in terms of nouns rather than verbs. When possible, writers should use no more than two such phrases in a row and should replace the possessive "of the" with an apostrophe. In the following example, the student can rearrange the sentence to omit all seven prepositions by transforming them into adjectives or by using the possessive apostrophe:

Original: The issue of the case at bar was whether the exclusivity clause precluded Kissinger from recovery through civil action when the injury was inflicted by an intentional tort of the employer and did not result in disability.
Revised: The issue was whether the exclusivity clause precluded Kissinger's civil action recovery since the employer's intentional tort inflicted a nondisabling injury.

Note that "the intentional tort of the employer" becomes "the employer's intentional tort," a more direct and economical statement. Similarly, constructions such as "recovery through civil action" can be written more efficiently by turning the phrase into an adjective: "civil action recovery," thereby transforming another noun-based structure into a more concise expression.

Relative clauses (usually introduced by the pronouns "which," "that," and "who") cause similar entanglements. For example, these sentences written by first year law students can be easily reduced to leaner form:

Original: The court accepts that Revere, who was a social guest of one of the tenants, was not a trespasser on the premises of Wharton, who was the landlord of One Traverso Street at that time.
Revised: The court accepts that Revere, a tenant's social guest, did not trespass on the premises of Wharton, then landlord of One Traverso Street.

Original: The intentional tort exceptions that Larson describes in his treatise are inapplicable to the compensation cases in Michigan.
Revised: The intentional tort exceptions described in Larson's treatise do not apply to Michigan compensation cases.

Original: The rule, briefly stated, is that personal injuries which flow from an intentional tort such as discrimination are independent of any disability which is compensable under the Act.
Revised: According to the rule, personal injuries flowing from an intentional tort such as discrimination are independent of any disability compensable under the Act.

Two basic revising techniques help to untangle the embedded clauses in these sentences: transforming the clauses into appositives or into participles. Although these terms may evoke unpleasant memories of rigid high school grammar lessons, they are invaluable editing tools, especially for lawyers needing to compact a lot of information into each sentence. The "who" clauses in the first example easily reduce to appositives by removing the unnecessary verbs: "who was a social guest of the tenant" becomes "a tenant's social guest," and "who was the landlord" changes to "then the landlord."

In the other examples, the writer can best focus the sentences by changing the "that" and "which" clauses into participles, otherwise
known as verbal adjectives. For instance, "the intentional tort exceptions that Larson describes in his treatise" can be written more efficiently by deleting the relative pronoun and turning the verb into a participle: "the intentional tort exceptions described in Larson's treatise." Likewise, in the last example, the "personal injuries which flow" condenses to "personal injuries flowing from. . . ."

**OPTIONS FOR EDITING EMBEDDED SENTENCES:**
- Use apostrophes to indicate possession
- Turn prepositional phrases into adjectives
- Remove the verb in "who," "which," and "that" clauses, creating the more concise appositive
- Change the verb in "who," "which," and "that" clauses into an adjective (participle)

Again, the key to revising tangled prose caused by embedded sentences is to look twice at every relative clause and phrase. If it's possible to remove them, do so.

**REPETITION OF SENTENCE STRUCTURE**

Often this reduction process, though a positive step, results in a further difficulty. When the writer reduces each sentence to its simplest state, the prose may consist of many short sentences beginning with a subject + verb format:

Nelson Rayman performed as an independent contractor at One Traverso Street. He controlled the manner and method of the renovation work. Wharton, the owner, controlled only the results of the project. Rayman carefully completed the renovations according to the terms of their unambiguous contract. He hired, directed, and compensated the workers. Wharton only determined the sequence of the renovations. She also supplied building materials for the project.

In this example, the writer has reduced the overweight constructions, but hasn't paid attention to the reader's need for sentence variety. Without it, the argument is difficult to read for reasons other than tangled structures or abstract ideas. The pendulum has swung to the opposite extreme: the prose is reduced to a simplistic level below desirable efficiency. Not only is it a chore to read pages of this redundant pattern, but the argument no longer sounds professional. Instead of interweaving the pertinent facts, the writer has listed them
in choppy, isolated fashion, none specifically connected to any other.

Clearly integrating the facts with the legal ramifications of a case requires careful manipulation of sentence structure. Readable yet sophisticated prose is as essential to legal writing as is the clarity of the legal principles involved; clear professional writing reflects sound thinking. To achieve this professional writing level, students should vary sentence lengths, beginnings, and types, creating readable patterns that suggest the interlocking legal structures behind them.

**Sentence Lengths:** As is true with any long process—and writing is certainly a long process if done carefully—writers tend to lapse into repetition. Sometimes they unconsciously fall into the rhythm of repeating the same sentence length throughout a paragraph or a page. Although everything else in those sentences may be varied, the repetitious rhythm will have a negative effect on the reader. Analogous is the driver who begins to watch the repeating pattern of white lines in the road. No matter how stimulating the conversation in the car, or how loud the music on the radio, the hypnotic affect of those repeating highway lines causes drowsiness. So, too, with lines of prose. To avoid lulling the reader, make sure each paragraph contains sentences varied in length. The rule of thumb is that every fourth sentence should be a short one—but such "rules" establish equally repetitious patterns. It's better to be aware of the need for variety and use common sense in alternating lengths.

**Sentence Beginnings:** In an attempt to pare down overweight constructions, legal writers often take the extreme step of beginning every sentence with a straightforward but redundant subject + verb pattern. By so doing, the writer also loses the opportunity to subordinate ideas in introductory dependent clauses or to use other transitional devices indicating the exact relationship of the ideas in the sentence. For example, the following statement begins with a dependent clause, thereby adding emphasis to the second part of the sentence:

(subordinate clause)

"Although their contract clearly established Wharton and Rayman's em-
player/independent contractor relationship, the fact that their conduct was consistent with their contract determines Raymans' status."

Without the subordinating conjunction "although," neither end of the sentence has special emphasis:

"Wharton and Rayman's contract clearly established their employer/independent contractor relationship, and the fact that their conduct was consistent with their contract determines Rayman's status."

Beginning with subject + verb, the second version gives the two halves of the sentence equal footing by using the coordinate conjunction "and." Since most legal writing discusses intricate legal relationships, writers should pay special attention to how they begin their sentences, avoiding the coordinate conjunction created by consistent subject + verb patterns. Check to make sure the majority of sentences do not begin this way.

Sentence Types: This category assumes a knowledge of the four basic sentence structures: simple, complex, compound, and compound-complex. Similar to repeating sentence lengths, favoring one sentence type over the others creates a dull rhythm. As long as the student recognizes his predilection for one pattern, he can vary the types when he edits the rough draft. Here's a quick review of the four basic structures with the parts marked:

Simple = One main clause + any number of phrases

Ex.: "Raymond agreed to renovate Wharton's warehouse within one year in accordance with the previously drafted blueprints."

Complex = One main clause + one or more subordinate clauses and any number of phrases

Ex.: "While the renovations were in progress, Wharton made, over Rayman's objections, four on-site modifications in the plans and the materials."

Compound = Two or more main clauses + any number of phrases

Ex.: "Wharton could not terminate Rayman's employment contract at will, and Rayman was not bound by his contract to work exclusively for Wharton."
As is readily apparent, the writer cannot subordinate ideas effectively if the primary sentence types are simple or compound, since these two patterns use coordinate conjunctions as the major connectives.

One point remains. Legal writers need to begin effective organizational techniques at the sentence level, so that the order of information in these building blocks sets the pattern for the overall structure. Emphasis and cohesion in a lawyer's written argument begin with the strategy of the individual sentences. As previously discussed, lawyers tend to reason inductively, moving from the specific facts to the general conclusion. Any legal procedure follows this pattern. Before reaching a decision, the court renders a verdict based on this inductive process. In other words, the judge does not assume the defendant is guilty prior to trying the case; the court moves to an opinion by organizing and weighing all the known facts.

The progression is similar in well-written legal sentences. Known material comes first, while the writer saves the new information—perhaps more opinionated or more emphatic points—for the end. Such a pattern logically eases the reader from the familiar to the unfamiliar, establishing a clear context for each significant new point and creating natural supportive transitions. For example, this sequence of sentences follows the inductive, familiar-to-unfamiliar pattern:

Wharton, as the landlord of a building with multiple tenants, has a duty of reasonable care for areas of common use. Wharton's duty with respect to common areas includes the duty to inspect, safeguard, and issue warnings concerning dangerous conditions. Although the first floor foyer by intention and use in a common area, the plywood door is less certainly one, and the dangerous renovation area is probably not intended for common use. Social guest Revere's belief that the renovation area was a common area is neither decisive nor reasonable.
Note the progression in each sentence from the established information to the significant new material, preparing for the final opinion that Revere's belief is not reasonable:

<table>
<thead>
<tr>
<th>Beginning Established Information</th>
<th>Ending New Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Wharton as the landlord.........</td>
<td>has a duty of care for common areas</td>
</tr>
<tr>
<td>2. The duty includes................</td>
<td>to issue warnings concerning dangerous conditions</td>
</tr>
<tr>
<td>3. The first floor foyer is common area...</td>
<td>renovation area is not for common use</td>
</tr>
<tr>
<td>4. Social guest Revere's subjective belief that it was a common area...........</td>
<td>is neither decisive nor reasonable</td>
</tr>
</tbody>
</table>

If the writer had not followed this pattern, but had inverted the arrangement so that the new material came first, the important points would seem less logical, the transitions less clear, and the sentence finales anticlimactic:

Wharton has a duty of reasonable care for the areas of common use, since she is the landlord of a building with multiple tenants. Inspecting, safeguarding, and issuing warnings concerning dangerous conditions are the duties with respect to common areas. The dangerous renovation site is probably not intended for common use, nor is the plywood door, although the first floor foyer by intention and use is a common area. Neither decisive nor reasonable is social guest Revere's subjective belief that the renovation site was a common area.

This inductive sequence not only permits the writer to better control reader response, it also provides a clear organizational model for all levels of the written document—from the sentence, to the paragraph, to the overall format. To be effective, the inductive "movement" begins with the flow of information in the individual sentence and is reflected at each successive level of organization.

At this juncture, it may help to stop a moment and summarize. The following quick-reference list highlights the main steps necessary for editing legal prose:

**LEGAL WRITER'S EDITING CHECKLIST**
- Find all passive verbs. Can you switch them to the more dynamic active voice?
• Take a close look at each form of the verb "to be." Have you missed an opportunity to use a more vivid verb?
• Do any of your nouns contain the seeds of a verb? If so, change them to their verb forms to make your prose more lively and more persuasive.
• If you write more that two "who," "which," or "that" clauses or more than three prepositional phrases in a row, reduce these overweight constructions.
• Measure your paragraphs for sentence variety. Effective, readable prose varies sentence lengths, beginnings, and types.
• Make sure you place new and/or emphatic information at the end of the sentence, while beginning with more transitional established material.

Manipulating language so that the relationship of the words creates a dynamic, persuasive effect is a skill lawyers hold in especially high regard. In the recently decided Supreme Court case, *Grove City College v. Bell*, Justice Byron White's written opinion about the controversial subject illustrates his attention to the language itself as a "seamless web." In these two passages concerning the college's right to disregard federal stipulations about women's programs because the school does not receive direct federal aid, notice how effectively he uses active verbs and lean, hard-hitting language:

> Although it recognized that Title IX's provisions are program-specific, the [lower] court likened the assistance flowing to Grove City through its students to nonearmarked aid, and, with one judge dissenting, declared that "where the federal government furnishes indirect or nonearmarked aid to an institution, it is apparent to us that the institution itself must be the program."

> Only by ignoring Title IX's program-specific language could be conclude that funds received under RDS [Regular Disbursement System], awarded to eligible students, and paid back to the school when tuition comes due represent federal aid to the entire institution.

If nouns dominated the first draft of this opinion, Justice White has subdued them in favor of the more active and direct verb-oriented prose essential to clarity.

But even White's model provides little comfort to first year law students simultaneously obsessed with and overwhelmed by legal relationships. For them, writing means balancing precariously between two dangers: either entangling themselves in the web of legal argument, including every related fact in each sentence—or missing the essential connections altogether, producing what Faulkner has
described as "words like spiders dangling by their mouths from a beam, swinging and twisting and never touching." Clear legal writing maintains that delicate balance.

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Notes


