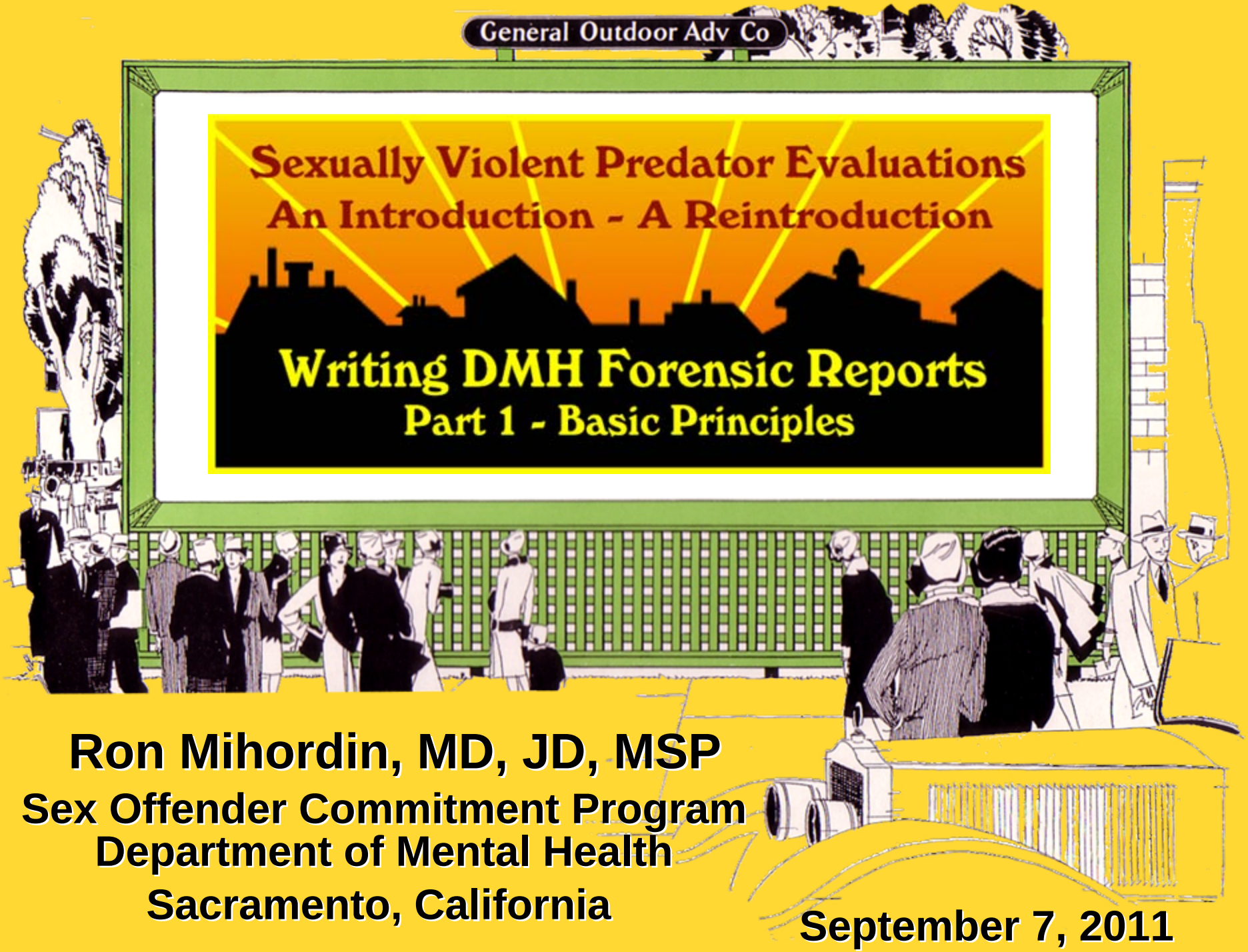
California Department of Mental Health

Sexually Violent Predator Evaluations

An Introduction – A reintroduction

Ronald J. Mihordin, M.D., J.D., M.S.P.
Acting Clinical Director Evaluation Service
Sex Offender Commitment Program

Sacramento, California
September 7-9, 2011



Sexually Violent Predator Evaluations
An Introduction - A Reintroduction

Writing DMH Forensic Reports
Part 1 - Basic Principles

Ron Mihordin, MD, JD, MSP
Sex Offender Commitment Program
Department of Mental Health
Sacramento, California

September 7, 2011

A Great Communicator in Action

SVP Forensic Reports
Goals of Training

1. Not a remedial English course.
2. To raise awareness-sensitivity.
3. To create a new identity.
4. Writing as a unperfectable craft.
5. Writing as a thoughtful activity.
6. An uphill battle:
   - We can do it without thinking.
   - Talking, writing – chewing, breathing
   - “So, what’s wrong with the way I write?”
   - “No one’s complained up to now?”

SVP Forensic Reports

SVP Writing by Contract

1. The May 1, 2011 – December 31, 2011 SVP evaluator requires the contractor to perform services under the following terms:
   - Contractor must competently and timely conduct evaluations as assigned. Contractor must communicate his/her evaluation findings in written reports and oral testimony succinctly and with clarity.

SVP Forensic Reports

SVP Writing by Contract

- The sexually violent predator (SVP) reports must also be consistent with Government Code Section 6219 and be capable of being readily understood by the general public.

SVP Forensic Reports

Government Code §6219

(a) Each department, commission, office, or other administrative agency of state government shall write each document that it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style.

(b) As used in this section, a "state agency document" means any contract, form, license, announcement, regulation, manual, memorandum, or any other written communication that is necessary to carry out the agency's responsibilities under the law.

SVP Forensic Reports

SVP Writing by Contract

- The sexually violent predator (SVP) reports must also be consistent with Government Code Section 6219 and be capable of being readily understood by the general public.

- Contractor must submit an Abstract of Essential Findings of no more than two pages for evaluation reports more than 15 pages in length.

SVP Forensic Reports General Principles

1. Speak to a wide audience.
   - If it’s not understood, it’s not communication.
   - Don’t underestimate the reader’s intelligence.
   - Don’t overestimate the reader’s knowledge.

SVP Forensic Reports General Principles

2. Speak to a wide audience.

- Our readers include:

  a. Mental health professionals.

  b. Legal professionals.

  c. Administrators and staff.

  d. General public – jurors.

SVP Forensic Reports

A Reader-Centered Philosophy

"Anyone who take writing seriously remembers the purpose of writing in the first place—to communicate with the reader."

"The writer must . . . ensure (not *insure* and not *assure*) that his meaning will get across that abyss between his mind and those of his many (unknown) readers."

Getting The Words Right,
Theodore A. Rees Cheney

SVP Forensic Reports

The Perfectibility of Words

"Words often ill serve their purpose. When they do their work badly, words militate against us. Poor grammar, sloppy syntax . . . impede communication and [foster] misunderstanding. Another . . . obstacle to effective communication: too many words."

The Dictionary of Concise Writing, 2nd Edition, Robert Hartwell Fisk

SVP Forensic Reports

The Perfectibility of Words

"We often believe that many words are better than few. Perhaps we imagine that the more we say, the more we know or the more others will think we know, or that the more obscure our writing is, the more profound our thoughts are. Seldom . . . Is this so. Wordiness is arguably the biggest obstacle to clear writing and speaking."

The Dictionary of Concise Writing, 2nd Edition, Robert Hartwell Fisk

SVP Forensic Reports

The Perfectibility of Words

Usually, in reading ~~someone's writing~~, we see more words than we need to . . . For example:

- "At this juncture . . .."
- "At this moment in history . . ."
- "Now ."

The Dictionary of Concise Writing, 2nd Edition, Robert Hartwell Fisk

SVP Forensic Reports

The Perfectibility of Words

Today, the style is prevailingly shoddy. In almost everything we read and hear there is complexity instead of simplicity and obscurity instead of clarity. This is particularly inexcusable in ~~written material~~ [writing], where words can be reworked.

The Dictionary of Concise Writing, 2nd Edition, Robert Hartwell Fisk

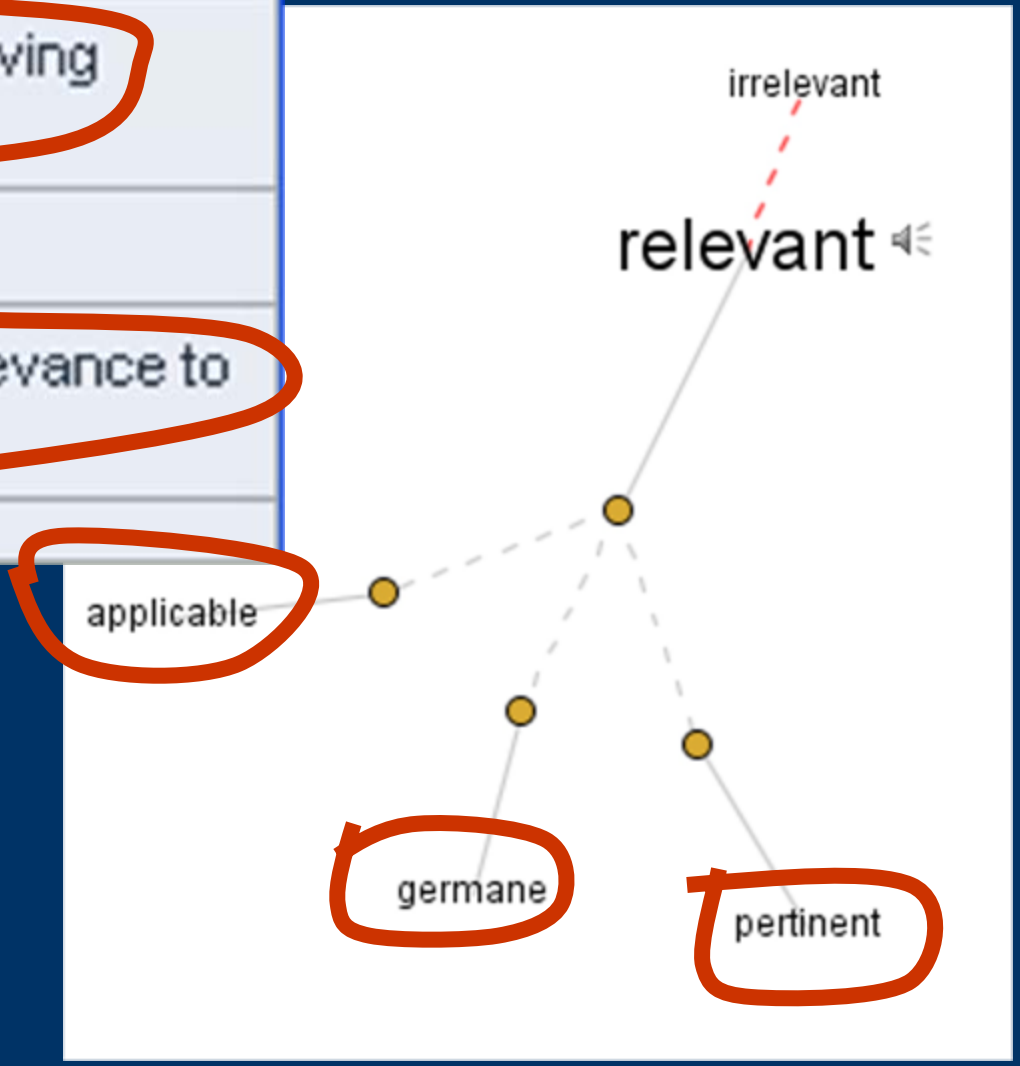
ADJECTIVES ON OFF

having a bearing on or connection with the subject at issue

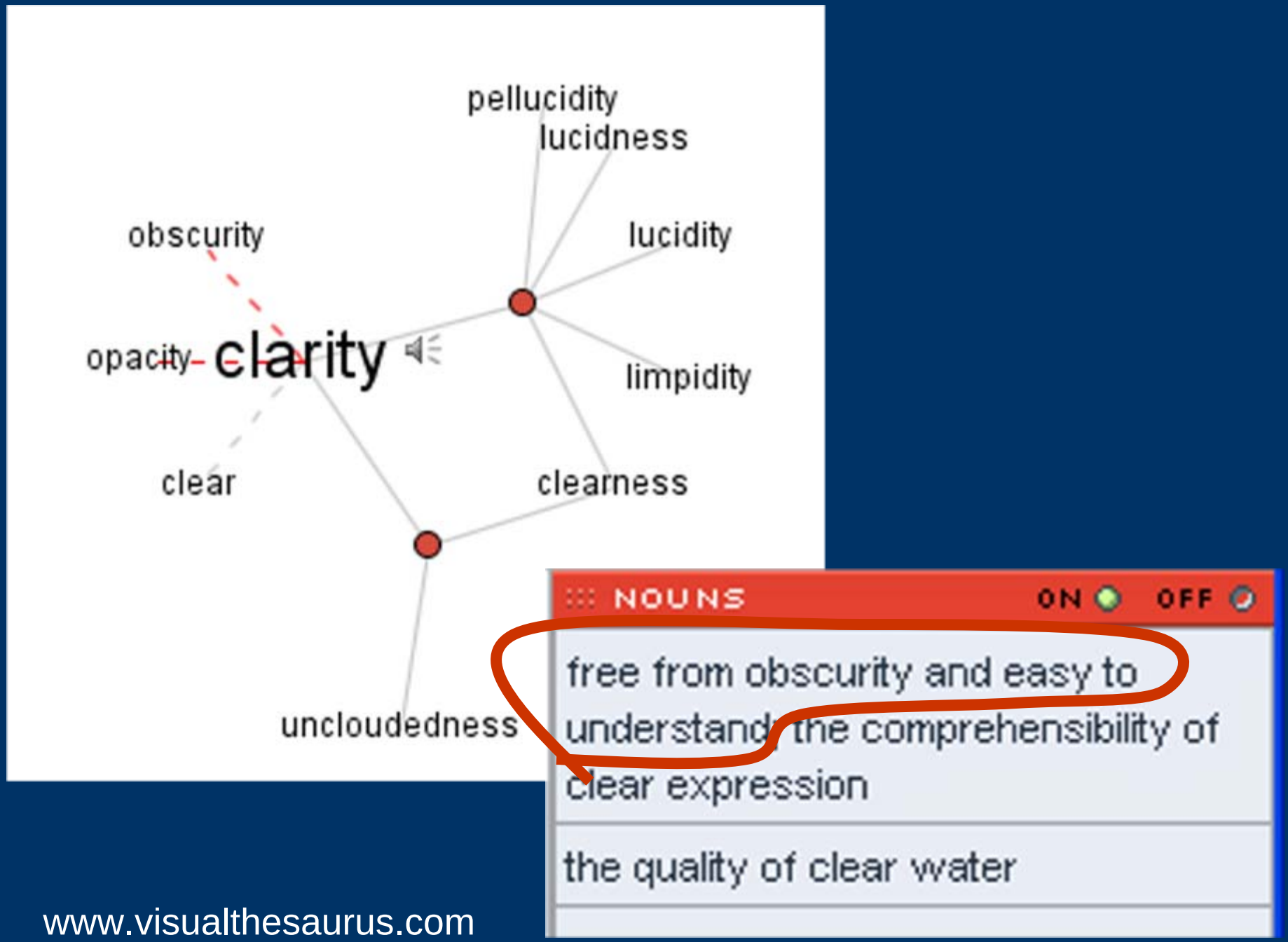
capable of being applied; having relevance

relevant and appropriate

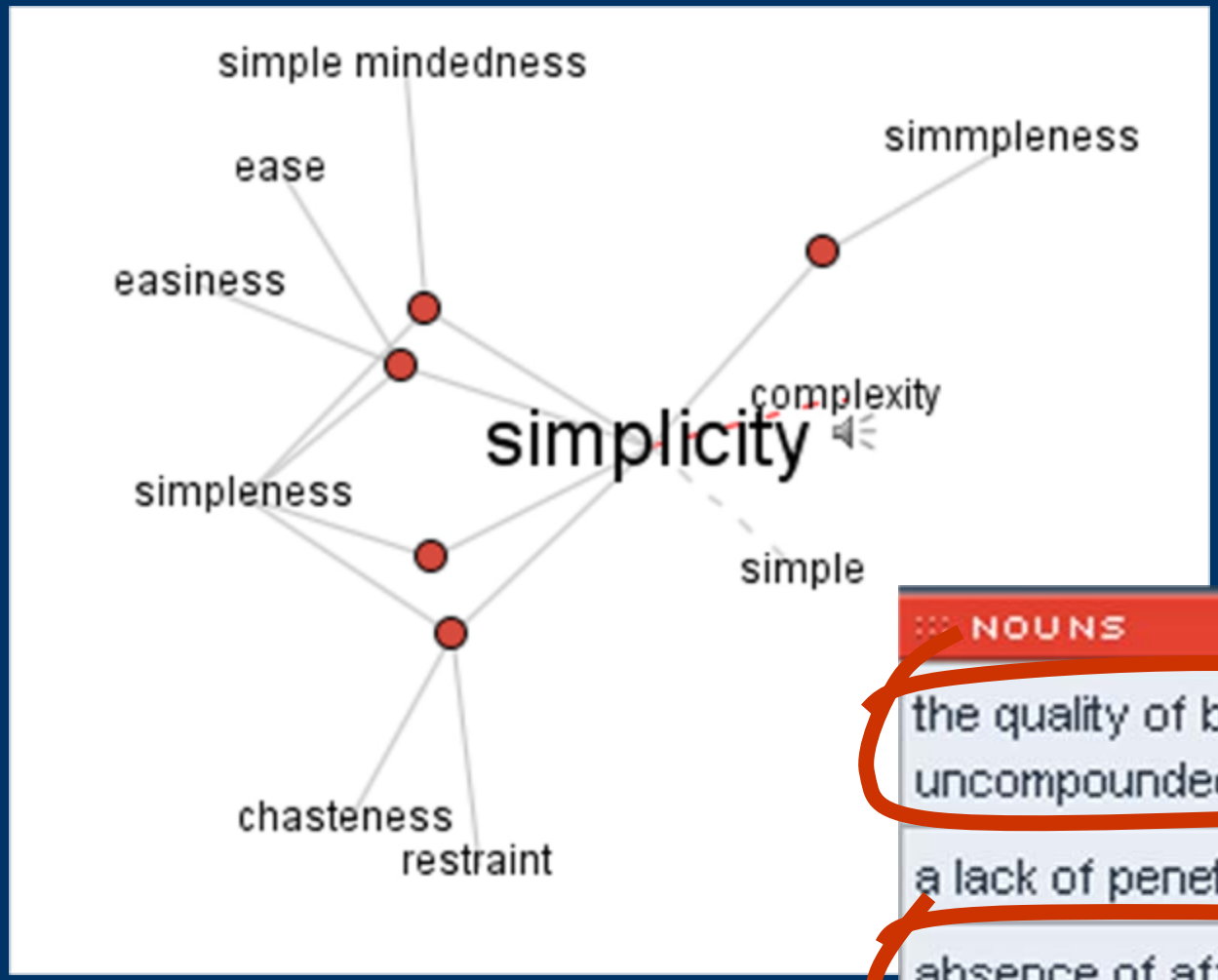
having precise or logical relevance to the matter at hand

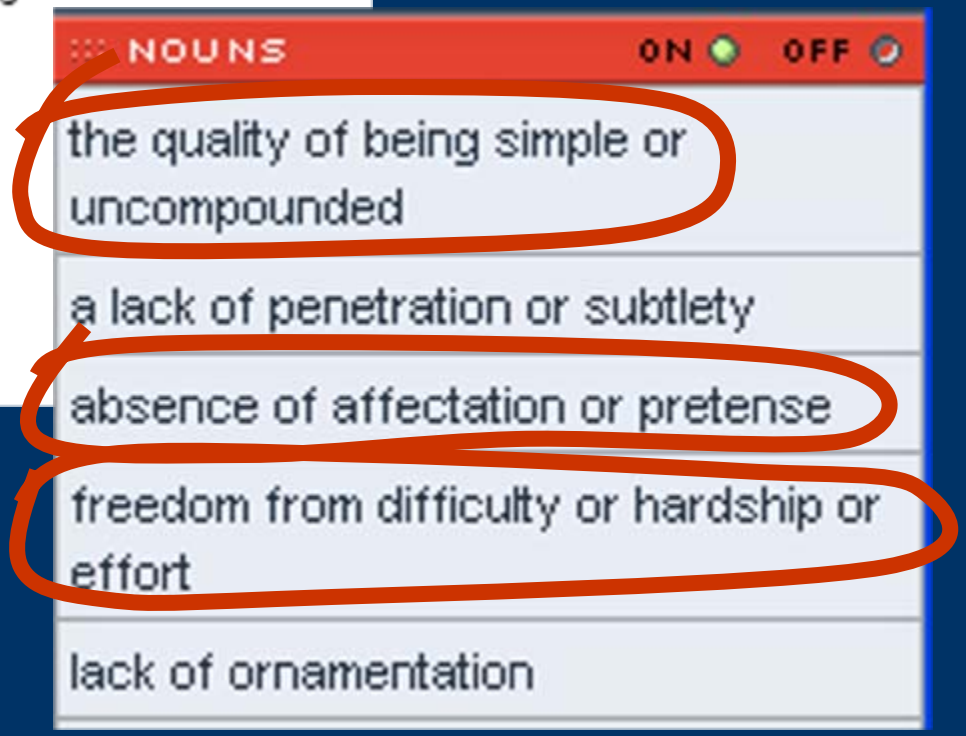


www.visualthesaurus.com



www.visualthesaurus.com





www.visualthesaurus.com

Relevancy

10.01 Focus on Legally Relevant Factors

Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues.

Specialty Guidelines for Forensic Psychology,
APA Council of Representatives,
Adopted August 3, 2011

Relevancy

11.04 Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law.

Specialty Guidelines for Forensic Psychology,
APA Council of Representatives,
Adopted August 3, 2011

Relevancy

11.04 Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

The opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

Specialty Guidelines for Forensic Psychology,
APA Council of Representatives,
Adopted August 3, 2011

SVP Forensic Reports
The Keys

Relevancy
- Pertinent, applicable
- To the point
- Context-dependent

Simplicity
- Not complex
- Few parts – few words
- Elegant

Clarity
- Easy to understand
- Unambiguous

SVP Forensic Reports
Data Dumping

In the context of oral testimony or a report, presenting significant amounts of unedited raw data (observations, documents, lists, references or quotations) including both the relevant and the irrelevant without identifying which is which.

The reader or hearer is presented with what is more of a do-it-yourself kit than a fully assembled report.

SVP Forensic Reports
Data Dumping

1. The Effects.
   - Reader misses important points.
   - Writer doesn’t see the “story.”
   - Reader loses interest.
   - A short story becomes a phone book.
   - More is less.
   - Invites cross examination.
   - Increases the chances for error.
   - Wastes time.
   - Wastes money.
   - Wastes trees.

SVP Forensic Reports
Data Dumping

2. The Causes.

- Laziness.
- Uncertainty.
- Ignorance.
- Poor training – Wrong training.
- No training.
- Inexperience.
- Lack of self-confidence.
- Preemptive witness evasiveness.

WHY IT TAKES LONGER TO KEEP THINGS SHORT

USA TODAY FRIDAY MARCH 25, 2011

AL NEUHARTH, USA TODAY Founder

1. **Short is not easy, in writing or speaking.**
2. **Short is much more difficult.**
   - President Franklin Delano Roosevelt said it took him about an hour to write a one hour speech, but two hours to do a 30-minute version.
   - Mark Twain said, “If I had more time, I’d write shorter.”
3. **First draft of this column sometimes runs more than 500 words. That’s easy.**

WHY IT TAKES LONGER TO KEEP THINGS SHORT

USA TODAY FRIDAY MARCH 25, 2011

AL NEUHARTH, USA TODAY Founder

4. **Trimming it down can take up to two or three hours. That's difficult.**
5. **Getting things short and to the point is the most important thing in:**
   - **Personal communication.**
   - **Professional communication.**
   - **Writing or speaking.**
   - **Grade school, high school, college, job.**

WHY IT TAKES LONGER TO KEEP THINGS SHORT

USA TODAY FRIDAY MARCH 25, 2011

AL NEUHARTH, USA TODAY Founder

6. **Long-winded stuff loses the attention of:**
   - **Listeners.**
   - **Readers.**
   - **Viewers.**
   - **Friends.**
   - **Family.**
7. ***Think things through and keep them short.***

SVP Forensic Reports
Data Dumping

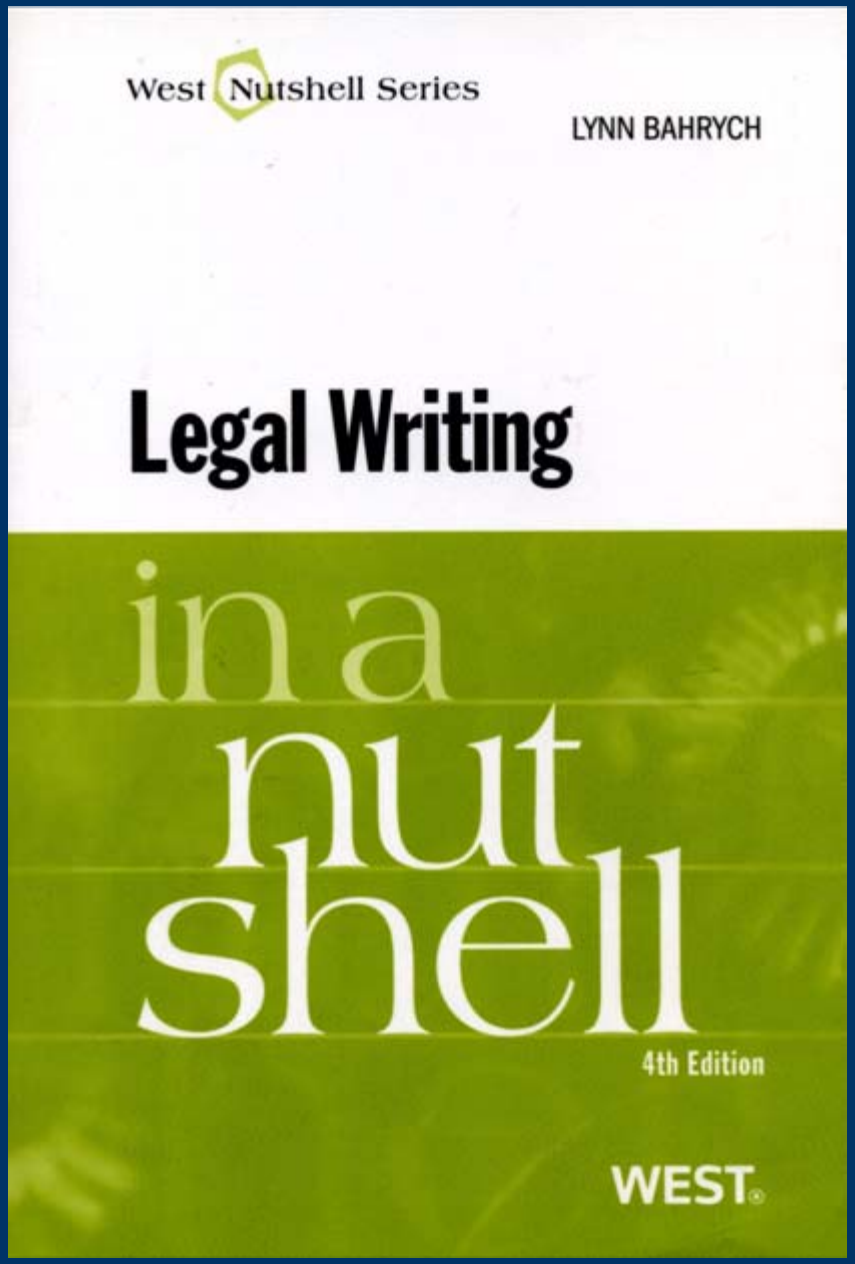
Preemptive Witness Evasiveness?

1. Doctors, scientists and economists have been given the power of evasion through the magic of bafflegab.

2. Bafflegab – complex opinions and confusing jargon used to evade answers on cross-examination.

3. Report writing as an exercise in preemptive evasiveness as a witness?

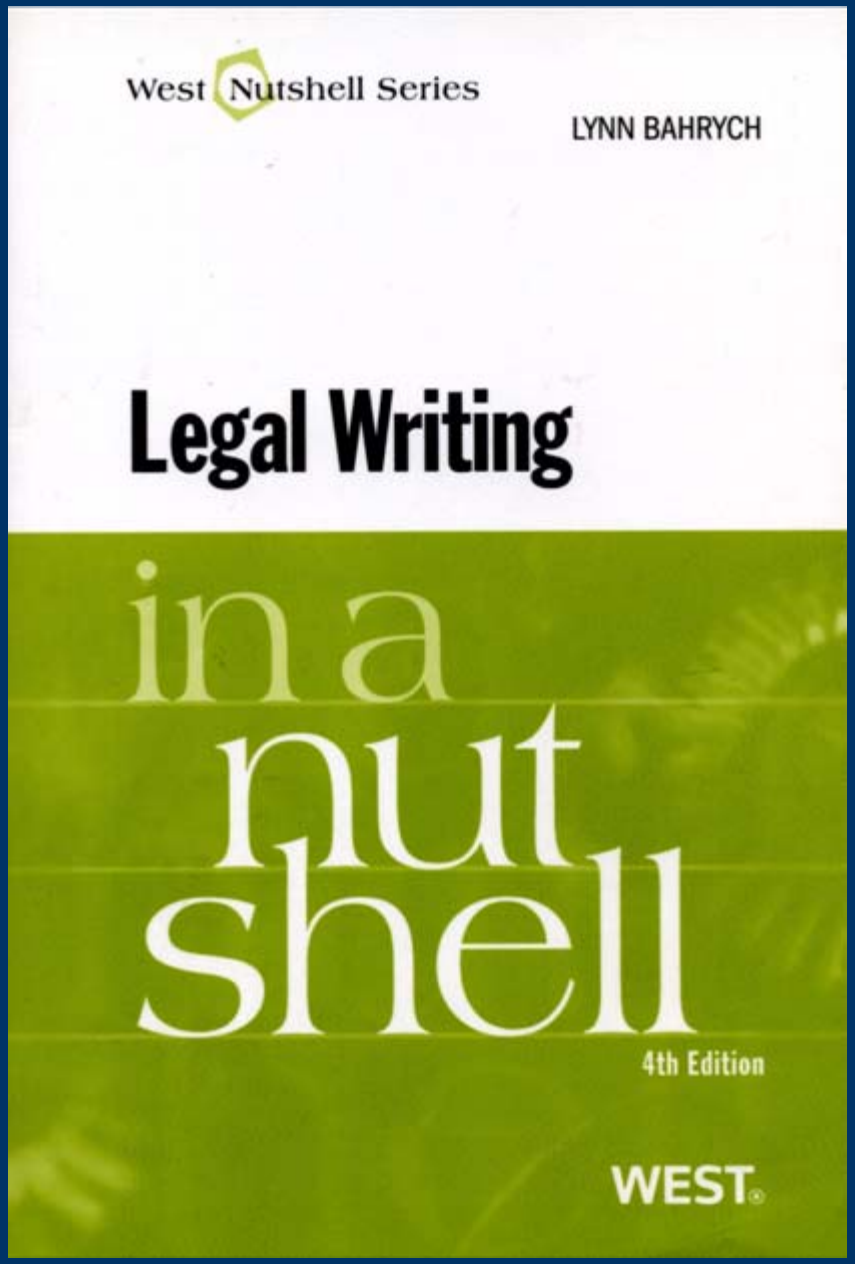
McElhaney, *ABA Journal, March 2010*



The Final Touch

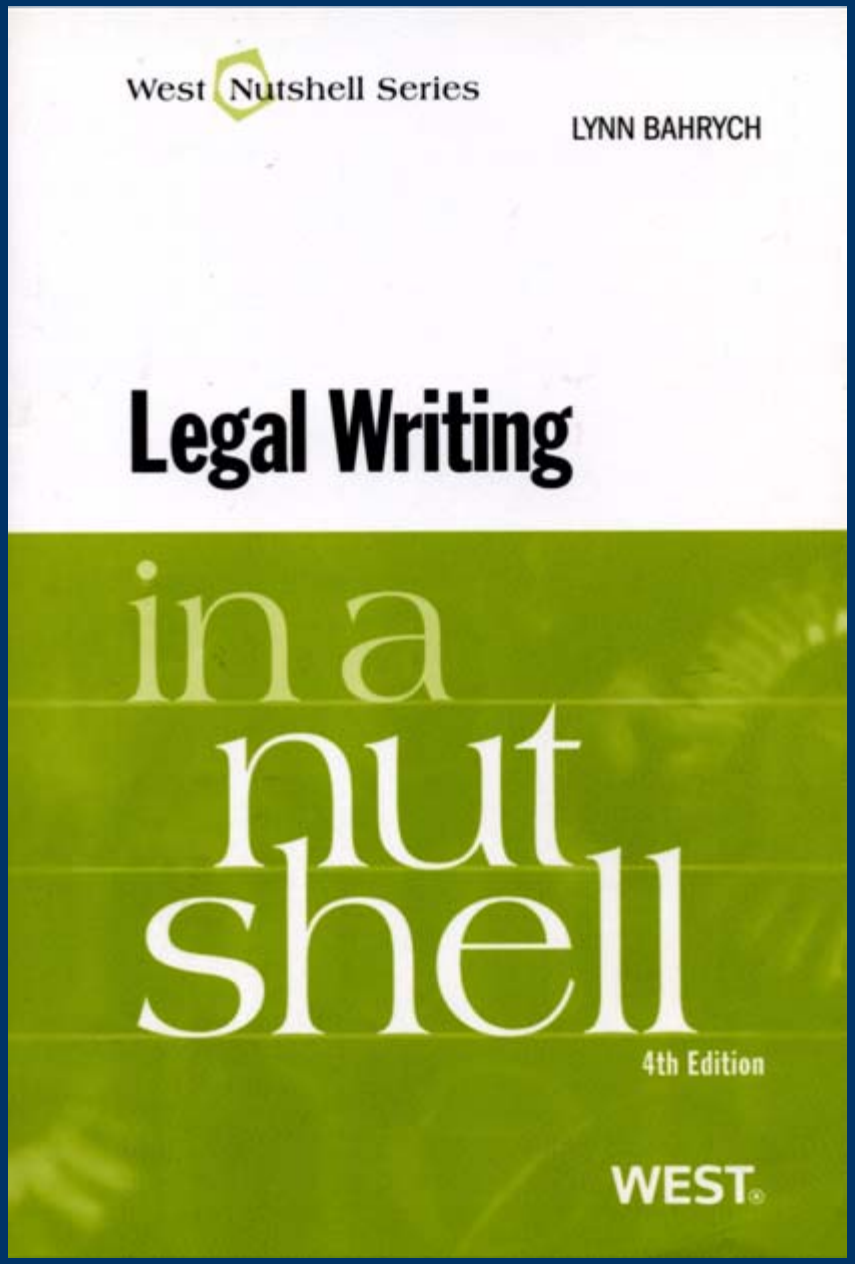
1. Careful revision from a printed draft is essential.

2. As all writers know, brevity takes more time than verbosity. Your . . . writing will be more persuasive if it is lean and sharply focused.



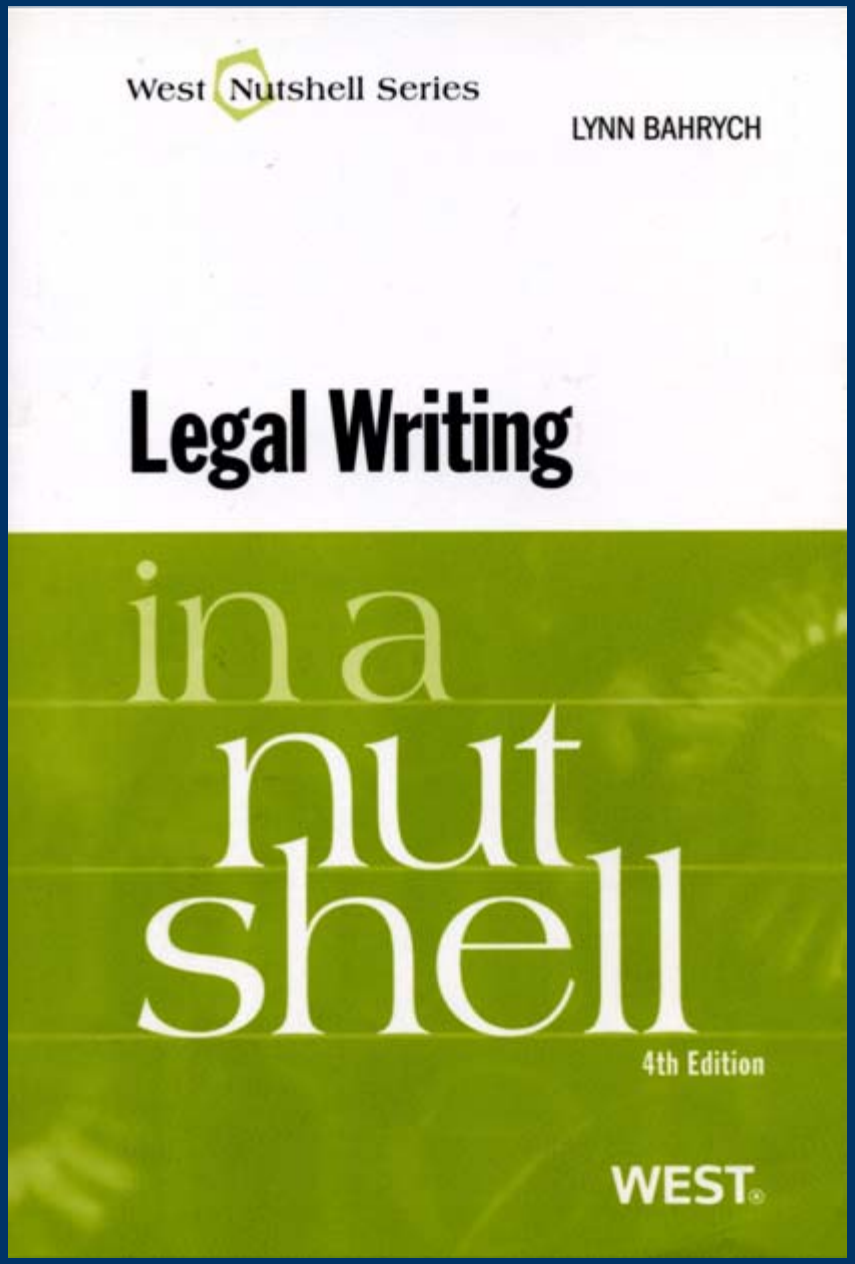
Writing for the Lay Reader

1. Plain English is part of legal writing curricula.
2. The goal: clarity and ease of reading for non-professionals.
3. Ordinary, everyday words when possible.
4. Specialty words must be defined in Plain English.
5. Boilerplate has no place in writing for the lay reader.



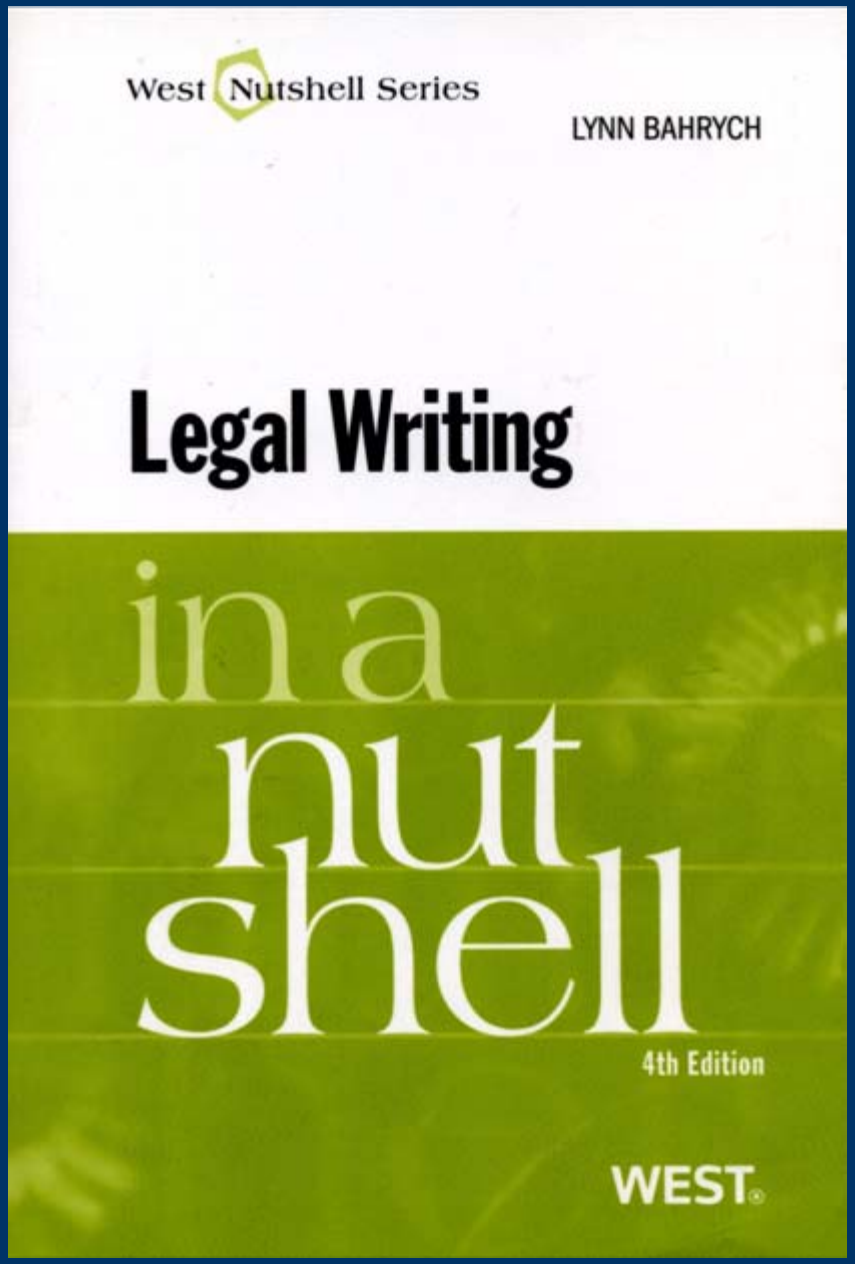
Writing for the Lay Reader

6. Before you write, ask:
   - Who is the audience?
   - What can I assume they know?
   - Some or no knowledge of the law?
   - Some or no knowledge of my profession?
   - Will professional terms be understood?
   - Can I use professional terms without sounding condescending?



Persuasive Writing

1. Keep it simple.
2. Your writing should make sense to the reader in terms of everyday life.
3. Be Concise.
4. Judges - universally complain that briefs are too long.
5. Complain that there is too much laborious, unapplied case analysis.

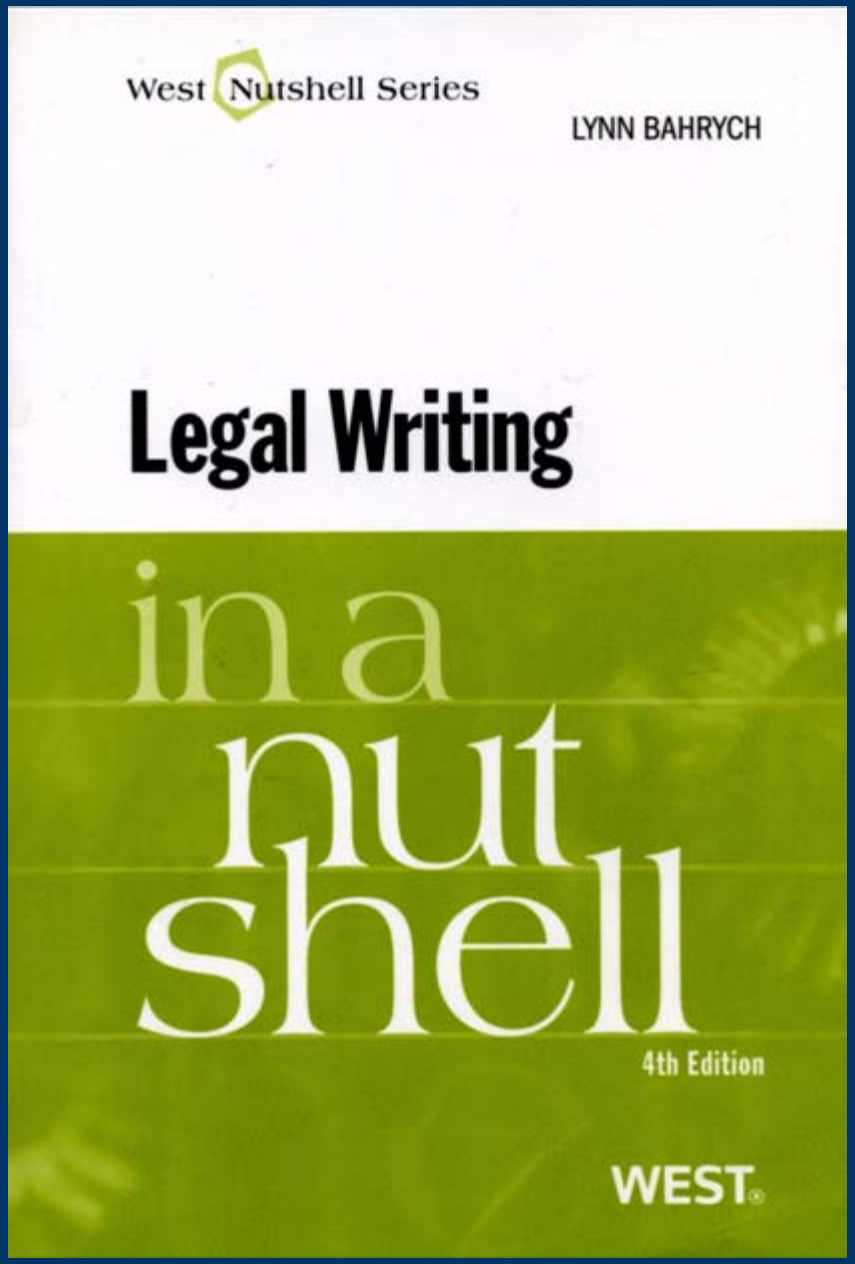


Persuasive Writing

1. Judge's point of view: shorter is better.

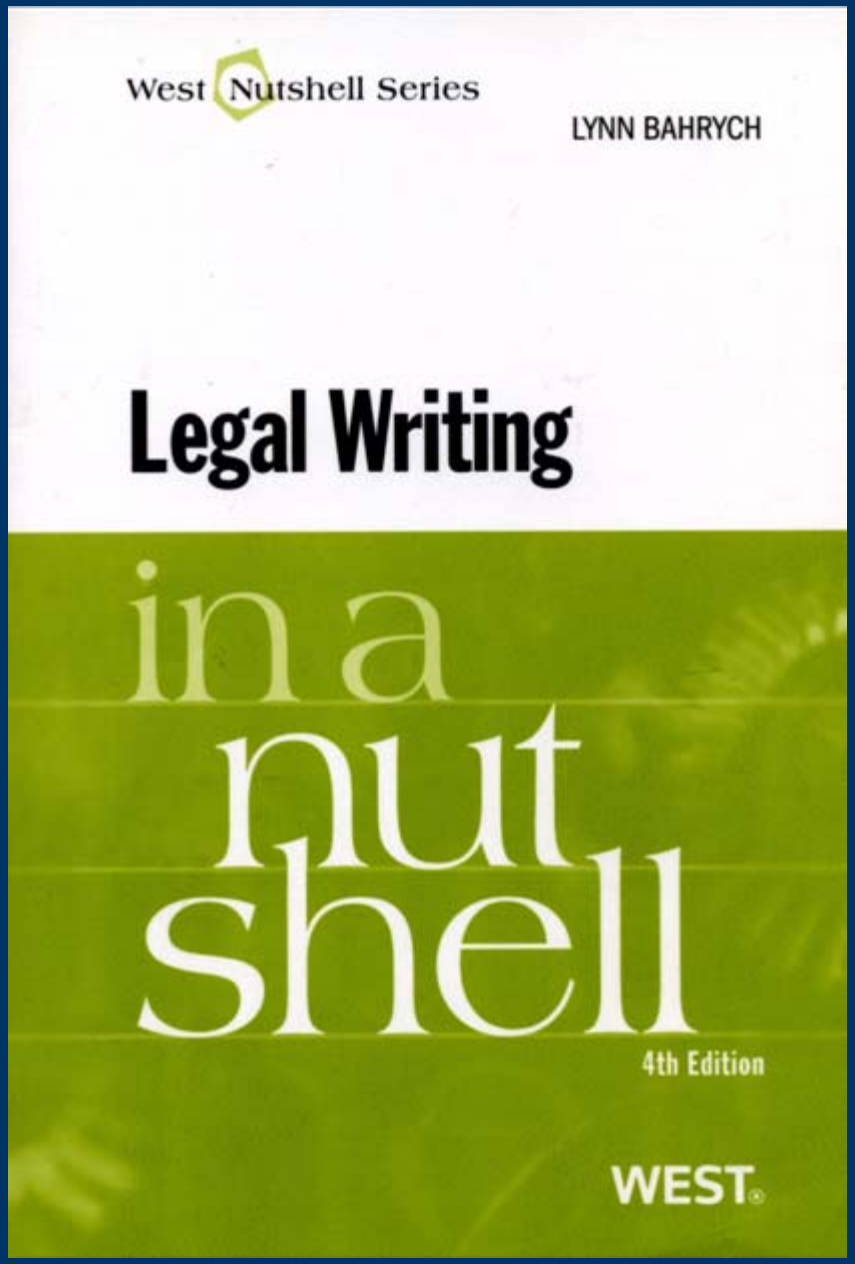
2. Strings of citations and multiple case are rarely helpful.

3. Long quotations from cases and other authorities may not be read.



Persuasive Writing

1. Unpersuasive words may weaken the impact of your writing.
2. Avoid using “clear” and “clearly” or “simply” or “obvious” and “obviously.”
3. Nouns and verbs persuade, adjectives and adverbs don’t.
4. These overused words may irritate the reader.



Persuasive Writing

Controlling Tone

1. Tone often overlooked by legal writers.
2. Tone is never overlooked by readers.
3. Conspicuous tone blocks reception of content.
4. Reader reacts to tone first, then content.
5. Beware of tones: informal, stuffy, pretentious, bitter, hyperbolic, casual, or uncertain.

SVP Forensic Reports
Data Dumping

2. Put yourself in the readers shoes.
   - Ever read USA Today?
   - Ever buy a “For Dummies” book?
   - Ever use CliffsNotes or Nutshell Series?
   - Used Rick Steves’ travel guides?
   - Read the “white pages” for fun?

SVP Forensic Reports
Don’t Data Dump

1. Digest, process, summarize, prioritize the material from source documents.
2. Don’t let ideas get lost in a jungle of words and numbers.
3. Accentuate the relevant, eliminate the irrelevant and don’t mess with Mister In-Between.
4. Less is usually more.
5. Give the reader more than a do-it-yourself kit.

SVP Forensic Reports

Do Good Guide Work (GGW)

1. Don’t just point and name.
2. Explain what it is (simply).
3. Put it in context.
4. Identify significance.
5. Identify relevance.

SVP Forensic Reports

So you want to obfuscate? Here's how.

1. Vocabulary – Use words not part of everyday conversation.
2. Format – Use long "compound" paragraphs.
3. Detail – Go from helpful to distracting and confusing.
4. Background – Use concepts familiar to only elite insiders.
5. Volume – Put the reader off by a daunting demand of his time.

SVP Forensic Reports

So you want to obfuscate? Here's how.

6. High Density – Throw too many ideas at the reader in too few words.
7. Low Density – Give the reader too little useful information in too many words.
8. Disorder – Present information without regard to chronology or issues.
9. Emphasis – Do not distinguish what is important from what is less important or irrelevant.

SVP Forensic Reports Economy of Expression

1. Say only what needs to be said.
2. The writer who is frugal with words writes a more readable report.
3. You can shorten long reports by eliminating:
   - Redundancy.
   - Wordiness.

Concise Rules of APA Style. (2005)

SVP Forensic Reports Economy of Expression

3. You can shorten long reports by eliminating:
   - Jargon.
   - Evasiveness.
   - Overuse of passive voice.
   - Circumlocution.
   - Clumsy prose.

Concise Rules of APA Style. (2005)

SVP Forensic Reports Economy of Expression

3. Weed out:

- Overly detailed descriptions.
- Gratuitous embellishments.
- Elaboration of the obvious.
- Irrelevant facts or observations.

Concise Rules of APA Style. (2005)

SVP Forensic Reports

McElhaney's Tricks of the Trade

The Power of Plain Talk

I am always struck with the confusing verbal clutter that most lawyers [mental health professionals?] use talking to each other , the judge, the witnesses and even the juries.

ABA Journal, January 2010

SVP Forensic Reports

McElhaney's Tricks of the Trade

The Power of Plain Talk

Law schools [graduate schools] supply both the best and worst of what practice is all about: How to spot all the issues in a case, but not how to write and speak simply and clearly to judges, juries, clients, witnesses and other "real people."

ABA Journal, January 2010

SVP Forensic Reports

McElhaney's Tricks of the Trade

Plain Language

- Speak in simple sentences. Compound and complex sentences invite confusion. One idea per sentence, please.
- Use simple words. You want everything you say to command instant understanding.
- Facts, not opinions, have the power to persuade.

ABA Journal, January 2010

SVP Forensic Reports

McElhaney's Tricks of the Trade

Words to Avoid

- "Plainly," "clearly" or "obviously" are words that should not be used. If something is really plain, clear, or obvious you don't need to say so.

- "Egregious," "Heinous," or "Outrageous." If something is really that bad, you shouldn't have to tell people that. These are pompous words, don't use them.

ABA Journal, January 2010

SVP Forensic Reports

McElhaney's Tricks of the Trade

Go for the Lean Look

- Start with a simple outline that covers the issues, facts, and conclusions.
- Cull out the weak or irrelevant points.
- Toss out whatever gets in the way of message.
- Discard what doesn't need to be said, even if it doesn't hurt.
- What's left will be tight. Lean. Spare. It will crackle with power because it is not diluted with stuff that doesn't matter.

ABA Journal, July 2007

SVP Forensic Reports

McElhaney's Tricks of the Trade

Go for the Lean Look

- In law [graduate] school, we were rewarded with good grades for spotting and articulating every conceivable issue but were almost never expected to drop what wouldn't fly in the real world.

- Failure to toss out the weak or irrelevant stuff runs the risk of creating a mishmash of ideas and lumpy, sodden writing.

ABA Journal, July 2007

SVP Forensic Reports

McElhaney's Tricks of the Trade

Writing that Works

- You don't need to say everything you can say.
- You don't want your reader to react like the fifth-grader who wrote in his paper: "This book told me more about penguins than I wanted to know."
- It's a report not a treatise. Don't tell the reader everything you had to learn to write the report.
- It's not an initiation into a secret order. Don't haze the reader by torturing them with technicalities they don't need.

ABA Journal, July 2007

SVP Forensic Reports

McElhaney's Tricks of the Trade

How to Not Make Your Point

- Burying your message in clutter.
- Making your point based on obscure, esoteric technicalities.
- When it comes to technical matters, most people have a short attention span.
- Making the centerpiece of your message something that doesn't relate to the interests or abilities of the fact-finders.

ABA Journal, November 2007

SVP Forensic Reports

McElhaney's Tricks of the Trade

How to Not Make Your Point

- Overstating your message. Understatement is more powerful than overstatement.
- Using adjectives and adverbs—those exciting, seductive words that keep slipping into what you write and how you talk.
- Using adjectives and adverbs. They're poison. Adjectives and adverbs tell people what to think. Simple verbs and nouns are the workhorses of good speaking and writing.

ABA Journal, November 2007

SVP Forensic Reports

McElhaney's Tricks of the Trade

Communicating Effectively

- As a lawyer [forensic psychologist], you are a professional writer and speaker.
- No one pays you to do legal research [or a forensic evaluation] and do nothing with it.
- You are a paid writer and speaker. You have the responsibility of being an effective writer and speaker. A communicator.
- Clarity and simplicity are the keys to effective communication.

ABA Journal, January 2011

SVP Forensic Reports

McElhaney's Tricks of the Trade

A Poor Trade Off

- Precision or clarity?
- Lawyers [forensic psychologists] are obsessed with precision.
- Purchasing precision at the price of clarity is a self-defeating bargain.
- You can be both precise and clear—it's just more work.

ABA Journal, January 2011

SVP Forensic Reports

McElhaney's Tricks of the Trade

Keeping it Simple

- Avoid any word that does not command instant understanding. Your words should let the reader see your ideas without straining to grasp your meaning.
- "But, we deal in complicated concepts beyond the ken of ordinary folk. Special ideas need special words that only special people understand."
- *Au contraire mon ami* – Most legal concepts can be grasped by an average 12-year-old.

ABA Journal, January 2011

SVP Forensic Reports

More Complicated Than Splitting an Atom?

Nuclear Fission

Another name for splitting atomic nuclei is nuclear fission. In nuclear fission the two fragments that result have less mass than the original nucleus. What happened to the missing mass? Scientists found a clue in Einstein's theory of relativity. Albert Einstein (1879-1955) showed that a small amount of mass can become a great deal of energy. His famous equation, $E = mc^2$, tells that the energy (E) of any particle of matter equals its mass (m) times the speed of light (186,000 miles per second) multiplied by itself (c^2). When an atom is split in nuclear fission the lost mass is changed into an explosive burst of heat, light, and other high-energy radiation.

Atoms,Molecules and Quarks (1986)

SVP Forensic Reports

McElhaney's Tricks of the Trade

Keeping it Simple

- The problem is your "bad" vocabulary. You've got to train yourself to use simple language again.

Keeping it Short

- Obsession with precision leads to trying to make every sentence a completely accurate, self-contained statement of law [psychology] or the facts.
- You can't do it. So don't try.

ABA Journal, January 2011

SVP Forensic Reports

McElhaney's Tricks of the Trade

Keeping it Short

- If you've made a point, you don't need to say it again in the next paragraph, or even say that you said it before. Too many road signs clutter the path.
- Rule of Thumb: Rewrite any sentence that is more than two lines long.

Skip the Footnotes

- Footnotes fragment and interrupt.
- Unless your goal is to be viewed as a pompous pedant.

ABA Journal, January 2011

SVP Forensic Reports

McElhaney's Tricks of the Trade

Active Voice is Usually Best

- Passive voice has a formal tone that some think lends an air of dignity to writing.
- Passive voice is "a little stuffy" and tends to make sentences longer.
- Passive voice is avoided by good writers. Instead good writers use the active voice.
- Passive voice is not grammatically incorrect—just be sure you have a good reason for using it.

ABA Journal, January 2011

SVP Forensic Reports

McElhaney's Tricks of the Trade

Dumping Buckets of Facts

- Present key facts not laundry lists.
- Don't pour a bucket of numbered facts over the jury.
- Don't pour a bucket of numbers over the jury.
- The effective report does not simply solve a legal, math, or word puzzle. It tells story. It answers a question.
- The report should build a bridge and not a wall between writer and reader.
- A tone of academic erudition always puts a wall between you and the lay reader or hearer.

ABA Journal, February 2011

SVP Forensic Reports

Plagiarism - Definition

1. Plagiarism – Deliberate representation of someone else's *words* or *ideas* as one's own or the *deliberate arrangement* of someone else's material(s) as one's own.

Avoiding Plagiarism, Justina Elmore, Milne Library, SUNY Genesco (2007)

SVP Forensic Reports

Plagiarism - Definition

2. Any one of the following constitutes plagiarism:

- Direct quotation without appropriate punctuation and citation of source;
- Paraphrase of expression or thought without proper attribution;
- Dependence upon a source for a plan, organization or argument without appropriate citation.

Avoiding Plagiarism, Justina Elmore, Milne Library, SUNY Genesco (2007)

SVP Forensic Reports

Plagiarism - Types

1. Deliberate plagiarism:

- Copying a source and passing it off as your own thought or idea.
- Using . . . material from others . . . and turning it in as your own work.

Avoiding Plagiarism, Justina Elmore, Milne Library, SUNY Genesco (2007)

SVP Forensic Reports

Plagiarism - Types

1. Accidental plagiarism:
   - Citing a source but forgetting to put quotation marks around the quote or using quotation marks but forgetting the citation.
   - Carelessly using the same words when you meant to paraphrase or summarize with your own words.

Avoiding Plagiarism, Justina Elmore, Milne Library, SUNY Genesco (2007)

SVP Forensic Reports

Plagiarism - Types

2. Accidental plagiarism:

- Paraphrasing too closely and having the same sentence or paragraph structure as the source.
- Writing a paper that so closely follows a source as to have the same outline or paragraph structure.

Avoiding Plagiarism, Justina Elmore, Milne Library, SUNY Genesco (2007)

SVP Forensic Reports

Plagiarism - Types

1. Copy and Paste Plagiarism:
2. Word Switch Plagiarism.
3. Metaphor Plagiarism.
4. Idea Plagiarism.
5. Reasoning Style/Organization Plagiarism.

http://www.geneseo.edu/~brainard/plagiarismtypes.htm

Forensic Reports:

1. Must present the factual basis for each finding.
2. Must limit findings to those supported by "substantial evidence."
3. Must present the logical nexus between facts and findings.
4. Must represent individual professional judgment within statutory guidelines.
5. Must respond to all questions inherently posed by the law.
6. Must be case-specific.
7. Must be easily understood by the general public.

SVP Forensic Reports

1. Fact-based.
2. Fact-limited.
3. Case-specific.
4. SVP-focused.
5. Reader-centered.