By Hon. Alan S. Trust[1]

Brevity

I suppose my point could be made if I ended the article here. Doing so would likely result in either a lot of white space between the text and footnote, or the editors of the *Journal* shrinking this column to the size of a small ad and substituting a substantive piece in its stead. Rather than risk either of those, I will continue on—briefly.

The following quote is often misattributed to Mark Twain: "I have made this letter longer than usual, only because I have not had time to make it shorter." This quote is actually from the 17th century French philosopher and mathematician Blaise Pascal (1623-62), written in a letter to a friend. But it makes the point that writing less is actually more work that writing more. Expressing thoughts through verbal or written expression takes effort; condensing the written words to just enough to make the point is laborious. Many years ago, I learned of a short, small book on writing, which tells us, "[i]f those who have studied the art of writing are in accord on any one point, it is on this: the surest way to arouse and hold the attention of the reader is by being specific, definite and concrete."[2] While commentators' views on the use of punctuation have morphed over time,[3] this truism has not.

Early in my legal career, I discovered a book targeted specifically to legal writing.[4] The book most intuitively starts with this sentence: "We lawyers cannot write plain English."[5] Enough said?

Poor writing is not always a function of mere length, and good writing is rarely—if ever—an accident. As judges, we spend hours poring over decisions before we issue them. Why? Not just to attempt to reach the correct legal result, but to as compactly and as clearly as possible express the facts that underlie the dispute, the applicable law, the analysis conducted and the result we reached. We do so because we write with the intention of having our decisions read and understood, whether the reader agrees with our conclusions or not.

There are many guides available to assist in truncating legal writing, and this article is likely not going to be among them. Still, consider just a couple of examples: Instead of "In the case presently before the Court…" or "In the case at bar…"; why not just "Here…" Or, "If one reads the legislative history behind the adoption of Section XYZ of the Bankruptcy Code, the reader will come to the ultimate conclusion that Congress intended…"; why not just "The legislative history is clear that Congress intended Section XYZ … See H.R. …"

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Brevity also applies to the spoken word. Some who study human memory patterns might suggest that the law of primacy and recency[6] dictates that we make the same point three times because listeners are more likely to recall the first and last things they heard, but not so much the middle part; thus, make your point three times in hopes that the first and last times will register and be remembered. Instead, why not just make your point once and sit down? That way, what you said is the first and last thing heard, so it has a good a chance of being remembered. Plus, of course, all hearings are recorded in some fashion, so the court can always go back to the digital audio or the printed transcript to refresh itself on your argument, in addition to re-reading your clear and concise brief on the subject.

Rather than provide more examples, I will honor the title of this column and conclude. It is easy for us to continue writing or speaking in the hope that some magical words will emerge that sway the audience. It is much harder to emphasize each word you leave on the page or utter, but from a judge's perspective, in a world of overloaded dockets and overworked court staff, the less you say and the better you say it, the more persuasive you can be; even your adversaries will hopefully appreciate you making your point as concisely as possible, and flatter you by imitation.[7] abi

Hon. Alan S. Trust
U.S. Bankruptcy Court (E.D.N.Y.); Central Islip

Hon. Alan Trust is a U.S. bankruptcy judge for the Eastern District of New York in Central Islip and serves as a coordinating editor for the ABI Journal.

1 Disclaimer: None of the statements contained in this paper constitute the official policy of any judge, court, agency or government official or quasi-governmental agency. With the grateful assistance of **Bryan J. Hall**, law clerk to Judge Trust.

2 Strunk and White, *The Elements of Style* 21 (1979). This is not an endorsement. This book originally appeared in 1935 as authored by Strunk and Tenney. The 1979 version is 85 pages long and has the dimensions of a postcard.

3 *See* Ross Guberman, "Why Johnny, Esq., Can't Write: Ten Causes and Ten Solutions," *J. Prof. Development Q.* 1 (Nov. 2006), http://legalwritingpro.com/pdf/guberman-pdq.pdf; *see also* Ross Guberman, "'Certworthiness,' Charlie Sheen and the Serial Comma, and More (Part 3 of 3)," CircuitSplits.com, April 20, 2012, www.circuitsplits.com/2012/04/ross-guberman-on-certworthiness-charlie-sheen-and-the-serial-comma-and-more-part-3-of-3.html.

4 Robert C. Wydick, *Plain English for Lawyers* 3 (1979). This is not an endorsement. As an aside, 1979 may have been a banner year for writing writing books.

5 *Id.* at 3.

6 *See* Ryan Patrick Alford, "Catalyzing More Adequate Federal Habeas Review of Summation Misconduct: Persuasion Theory and the Sixth Amendment Right to an Unbiased Jury," 59 *Okla. L. Rev.* 479, 513-15 (2006) (discussing serial position effect); *see also* G. B. Welch and C. T. Burnett, "Is Primacy a Factor in Association-Formation?," 35 *Am. J. Psychol.* 396 (Jul. 1924), www.jstor.org/stable/10.2307/1414018.

7 Charles Caleb Colton, *Lacon or Many Things in Few Words* 113 (1820) (quote available at www.phrases.org.uk/meanings/imitation-is-the-sincerest-form-of-flattery.html).