The Writer's Block "Less Is More"

by Nancy Lawler Dickhute

Picture this: You and your family have just returned from a vacation abroad. Upon landing in the United States, you must complete a form declaring certain items purchased overseas. As you juggle children and carry-ons, you review one custom's declaration form which states in part:

> In certain instances, a Form 6059B request must be received and approved by the United States Customs Service before clearance will be granted. No action will be taken with respect to customs clearance until the Form 6059B request has received a favorable determination. When determination has been made that completion of Form 6059B is sufficient, steps for customs clearance may be taken without delay[1]

You read it through once and immediately ask, who must file the form? Who will take action? What action? Who will determine if the form is sufficient? You start to feel like a child who asks too many questions.

Nancy Lawler Dickhute is director legal writing and associate professor of law at Creighton University School of Law in Omaha. She is a1984 graduate of Creighton School of Law. Previously she served as a law clerk to now retired Chief Justice William Hastings and Associate Justice Leslie Boslaugh of the Nebraska Supreme Court. She was then in practice for eight years before joining the Creighton faculty. Nancy is a member of the Legal Writing Institute and the Association of Legal Writing Directors.

The problem with this declaration form becomes obvious: the reader has no clear picture of what individual or entity is responsible for determining if someone entering the country must file a 6059B Form. The writer has not identified the actors in the provision, creating the reader's confusion. However, hope exists that the provision can be revised to improve its clarity:

> If you are a non-resident entering the United States, you must fill out Form 6059B before clearing Customs. The United States Customs Service will not clear you until a Customs' Inspector approves your Form 6059B. If the inspector approves your Form 6059B, then Customs will clear you promptly.[2]

What a difference! Now the reader knows to whom the provision applies. The key to clarity here is two-fold: **1)** eliminating the passive voice and **2)** cutting down on the excessive use of verbs-turned-into-nouns (nominalizations). Ugh! Most lawyers cringe when the term "passive voice" is used. Shades of grammar school revisited! Most lawyers have never heard of nominalizations; so how do lawyers eliminate nominalizations if they are unfamiliar with them? It is easier than you think. With a few tips, any lawyer can learn to identify and eliminate excessive passive voice and nominalizations in his or her writing. The key is recognizing their presence.

Active and Passive Voice

Active and passive voice refer to a sentence's structure. With active voice the "actor" in a sentence appears as the subject of a predicate; the actor performs the action of the predicate. An example would be, "The law clerk filed the petition." Here the law clerk is performing the action of filing the petition. However, when writers use passive voice, the actor is not the subject of the sentence, but rather acted upon: "The petition was filed by the law clerk." With passive voice the writer has lengthened the sentence by adding excess "glue words," words which hold the sentence together but have little substantive value. In the passive voice example above the glue words are

"the," "was," "by" and "the," two more than the active voice version. More importantly, the writer has shifted the focus of the sentence from the actor to the item acted upon, the document. In doing so, the writer may have inadvertently changed the sentence's impact. The question is, was that shift intentional? Did the writer intend to emphasize the action (filing the petition) rather than the actor? If so, passive voice is appropriate, which leads to another point: Passive voice does have its place in legal writing. While there are numerous reasons why writers may use the passive voice, the three best ones are as follows:

1) *The writer wants to de-emphasize the actor*. With passive voice, the writer takes the actor out of the spotlight. The reader is less likely to focus on the actor, instead noticing the event or other object in the subject position: "The accusation was made by the defendant." Here, the reader notices the accusation more than who made it.

2) *The writer does not know who the actor is*. If the writer does not know who performed an act, using the passive voice is the only way to construct a sentence'. "The three-alarm fire was set around 3:00 a.m. on Saturday morning."

3) *The act or event is more important than the actor*. If the writer wants to focus on the act and deems the actor unimportant, using passive voice is the most effective means of achieving that end: "The election results have been certified!"

However, absent the writer **intentionally** choosing the passive voice, active voice is preferable. Why? **Active voice is concise**; the writer ends up using fewer words. When discussing complex or unfamiliar legal subjects, or novel legal arguments, less is often better. It is direct. Shorter sentences make the writer's point quickly. It is strong . Active voice uses simpler verb forms which make the position more persuasive, more convincing.

To use the active voice, the writer must be able to recognize and then eliminate passive voice. Let's use the first sentence of the Form 6059B example to illustrate. It reads, "In certain instances, a Form 6059B request **must be received** and **approved** by the United States Customs Service before clearance **will be granted**. "

*"However, absent the writer **intentionally** choosing the passive voice, active voice is preferable."*

The sentence contains two examples of passive voice (highlighted). Here are the clues to demonstrate its presence:

1) *The actor is not clearly identified*. Every sentence has a subject and predicate. Every time you proof a sentence, ask, is the subject performing the action? If the answer is "no," you've got passive voice. In the sentence above, the request (the subject) is not receiving, approving or granting itself custom's clearance; so there is no active voice.

2) *The sentence contains a prepositional phrase beginning with the word "by" following the predicate*. With passive voice, the actor is often buried in the sentence as the object of the preposition "by." In the example above, the actor is the United States Customs Service. That entity is receiving and approving custom's clearance. The revised example makes that clear: "The United States Customs Service will not clear you until a Customs' Inspector approves your Form 6059B."

3)*Sometimes the "by" phrase is missing but can be inferred*. In the example above, there is no "by" phrase following the predicate "will be granted." Still, one can be inferred as someone has to grant clearance. If you can infer the actor and have no intent to use the passive voice, revise the sentence to use active voice.

4) *The passive voice uses a form of the verb "to be."* Not every sentence containing a form of the verb "to be" (am, is, are, was, were, be, been) is passive. Sometimes the "be" verb is just a helping verb that determines tense as in, "The police officer was asking the accident victim the details of the

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collision." However, a sentence in which the "to be" verb is present, may indicate that the sentence is in passive voice. In our example, the predicate, "must be received and approved" and "will be granted" contains two forms of the verb "to be," indicating passive voice.

Most times, I advise people to write the draft of a document in any fashion and wording that is comfortable. If the creative juices are flowing, get your ideas down on paper. The first draft of any paper should always be written from the writer's perspective. Once your ideas are firmly ensconced on paper, then go back and make your choice to use active or passive voice. In the "revised" example about Form 6059B, the writer eliminates passive voice by using the actors as the subjects, thus avoiding "by" phrases and lengthier verb forms. By uncluttering the sentences, the reader understands the information more clearly and quickly.

Nominalizations

English speaking people prefer verbs to nouns in writing. Verbs are the strongest words in our vocabulary. They are the only ones that standing alone can create a sentence: "Go!" "Fetch." "Kneel." Using verbs to carry the action in our sentences creates confidence in the reader that the writer is firm in his or her conviction. Unfortunately, too often, writers take perfectly good verbs and turn them into nouns. "Legislate" becomes "legislation"; "govern" becomes "government"; "complain" becomes "complaint." When a writer turns a verb into a noun by adding a suffix, the writer creates a nominalization. Now, nominalizations are good and necessary parts of our vocabulary. However, when we write using too many of these verb-turned-noun-forms, we end up transferring our action away from the verb and losing both the clarity and impact of our sentence.

You can easily spot a nominalization. Look for words that end in "tion," "ation," ment," "ity," "ant," "ent," "ance," "ancy," "ence," "or" and "al." Once you spot them, ask yourself, have I made my idea less forceful by using the nominalization? If so, did I intend to soft pedal my idea? If the answer is "no," reverse it. Consider the second sentence in the Form 6059B example:

> No act**ion** will be taken with respect to customs clear**ance** until form 6059B request has received favorable determin**ation**.

There are three nominalizations in one sentence (highlighted). Are they necessary? Is the action of the sentence clear? Obviously not. We have a passive voice problem in the sentence, but we also have two actions—clearing customs and determining if Form 6059B is approved —which are not directly or clearly expressed. The way to fix the sentence isto focus on the verbs and revise using active voice and strong verbs: "The United States Customs Service will not clear you until a Customs' Inspector approves your Form 6059B. "

Please note, you cannot eliminate all nominalizations; some are necessary as in "Customs' Inspector" used above. The idea is to limit your use and as with passive voice, use them intentionally rather than by default.

A Parting Thought

Lawyers tell me, "I am so busy juggling my caseload, I have little time to revise. I write a document once, check for legal accuracy and spelling errors and I'm done. " I know, revision takes time. But if you can check for legal accuracy and spelling errors, you can check for clarity, too. If you really want the reader to get your point the first time, eliminate some of the clutter by using active voice and more verb forms.

[1] Example adapted from Richard C. Wydick, *Plain English for Lawyers* 34 (4th ed. 1998). The language of this example is for illustrative purposes only; it does not reflect an actual customs declaration form, although the language of state and federal regulations provides a wealth of examples of poorly-worded, obtuse and confusing sentences.

[2] *Id*. at 121.

[3] See generally, C. Edward Good, *Mightier Than The Sword* 44-58 (1989).