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The Scrivener: Modern Legal Writing



Right Writing or Rite Riting?

by K.K. DuVivier

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How often have you fretted over a spelling, punctuation, or grammar rule? Is the word spelled "O.K.," "OK," or "Okay"? Is it "disc" or "disk"? Do we use an apostrophe for "1990's," or is it "1990s"? Do we put punctuation inside or outside of quotation marks?

You hate to waste time, and money, over such petty questions, but you also do not want to appear uneducated. To complicate the issue, many of the respected sources—the U.S. Government Printing Office, the Associated Press, and the New York Times—list conflicting rules. Our dream might be of one uniform source for the correct form.

German writers now can live that dream. After more than two decades of deliberation, a government-sponsored commission, composed of linguists from the major German-speaking countries, recently issued a new standard German grammar called *Die neue deutsche Rechtschreibung*.

German writers should have embraced the *Rechtschreibung*. Although it contains over 600,000 entries addressing the rules of spelling, punctuation, and capitalization, its goal is to simplify and standardize the German language. One hundred spelling rules were cut from the official list (212, reduced to 112), and the rules governing commas were cut from fifty-two to nine.

Instead of praise, however, *Rechtschreibung* is receiving resistance and ridicule. It was to be phased in over a seven-year period, but already *Rechtschreibung* has been boycotted by major newspapers and magazines, including the prestigious *Der Spiegel*. Even German President Roman Herzog has rejected it, saying, "In the future, I'll do what I've done up till now: speak as I wish."¹

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

President Herzog's remark highlights an age-old debate. Should dictionaries and style manuals record popular usage or dictate it? Advocates of rule books have had an impact; schools dictate standardized grammar and spelling. Some of the debate about teaching children to read through a "whole-language" (or context) approach is that spelling and grammar skills are weakened.

Yet, few can debate that language is a living and evolving creature that cannot be tamed. Each time a new dictionary or manual is issued, it records new words, spellings, and rules to reflect the latest changes in the language. Every writer has the power to create new words or vary punctuation to achieve the impact desired. When the new form is more effective than the old, it is adopted by others, and no rule book can prevent its widening acceptance.

In contrast to many other writing contexts, legal writing is conservative. Because our form should never distract our readers from the substance, standard rules are the norm. *The Bluebook*, although widely criticized, gives us the uniformity legal writers seek for citation style. Furthermore, *The Bluebook* lists two specific style manuals—*U.S. Government Printing Office Style Manual* (1986) and *The Chicago Manual of Style* (14th rev. ed., 1993)²—in an effort to standardize grammar, punctuation, and spelling in legal writing as well. Although the English language probably never will have a *Rechtschreibung*, these standard legal-writing sources come close.

In closing, I'd like to share a parody of *Rechtschreibung*, describing a five-year phase-in for a comparable standardized code for English spelling:³

In the first year, "s" will be used instead of the soft "c." Certainly, sivil servants will resieve this news with joy. Also, the hard "c" will be replased with "k." Not only will this klear up konfursion, but typewriters kan have one less letter.⁴

There will be growing publik enthusiasm in the sekond year, when the troublesome "ph" will be replased by "f." This will make words like "fotograf" twenty per sent shorter.

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In the third year, publik akseptanse of the new spelling can be ekspekted to reach the new stage where more komplikated changes are possible. Governments will enkorage the removal of double letters, which have always ben a deterrent to akurate speling. Also, al wil agre that the horrible mes of silent "e's" in the languag is disgrasful, and they would go.

By the fourth year, peopl wil be reseptiv to steps such as replasing "th" with "z" and "w" with "v."

During ze fifz year, ve vil hav a reli sensibli riten styl. Zer vil be no mor trubls or difikultis and evrivun vil find it esi tu understand ech ozer.

Ze drem vil finali kom tru.

NOTES

1. Walsh, "German's Confusing Grammar Becomes Target of Reformers," *The Denver Post* (Sat., Mar. 15, 1997).

2. See *The Bluebook: A Uniform System of Citation*, 16th ed. (Cambridge, MA: Harvard Law Rev. Assoc., 1996), Intro., Rule 1.2 at 4.

3. Adapted from an e-mail from Mili N. Clark: <mclark@ACSU.BUFFALO.EDU>.

4. *Rechtschreibung* eliminates the Eszett, a Gothic-looking letter pronounced like an "s." The Eszett is replaced by a simple "ss," thus saving a key on the computer.



Catholic Lawyers Guild to Hold Red Mass on November 2

The Catholic Lawyers Guild will hold a Red Mass on November 2 at the John Paul II Center (formerly St. Thomas Theological Seminary), 1300 S. Steele St. in Denver. Additional information is available by calling Eileen S. Kottenstette in Denver at (303) 758-5003.

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