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The Scrivener: Modern Legal Writing



Plain English Part II: Shorter Sentences and Lighter Luggage

by K.K. DuVivier

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James Kilpatrick, a political commentator, refers to the “portmanteau syndrome,” the habit of packing everything the writer knows into a single traveling bag with ties, socks, and shirttails sticking out because the bag (i.e., sentence) is asked to contain more than it was designed to hold. His cure? . . . [A] note [his editor] left on [his] desk:

Kilpo: I have something for you: . . .

Those interesting objects are called periods. They are formed by the second key from the right on the bottom row of your typewriter. Please put them to good use.¹

January’s column² addressed the first of six specific “clear writing techniques to communicate information” set out in the SEC’s proposed rules for plain English³—the active voice. This column addresses the SEC’s second technique—shorter sentences.

Longer sentences can serve a variety of functions in literature. Sometimes, they create a languorous or conversational tone. For example:

When [Brigadier General Francis Barlow] wrote his reports he often lapsed into legalistic jargon: his troops moved “on or about” a certain hour, and after various experiences they took “the aforesaid hill” or woodlot or whatever, and through it all there is the echo of a lawyer’s clerk preparing a deposition; but underneath everything there was a ferocious fighting man who drove himself and his men as if the doorway to Hell were opening close behind them.⁴

Other times, running ideas together into one sentence creates a tense, dramatic, and breathless pace. For example:

Standing amid the tan, excited post-Christmas crowd at the Southwest Florida Regional Airport, Rabbit Angstrom has a funny sudden feeling that what he has come to meet, what’s floating unseen about to land, is not his son Nelson and

daughter-in-law Pru and their two children but something more ominous and intimately his: his own death, shaped vaguely like an airplane.⁵

In literature, sentences can be complex because often the images are vivid and the concepts simple. In contrast, it is best to keep the sentences simple in legal writing because the images are abstract and the concepts complex. Both of the sentences quoted above contain more than sixty words. The SEC noted that prospectuses with sentences of sixty or more words were hard to follow, so its plain English guideline recommends shorter sentences of from twenty-five to thirty words.⁶

How can you shorten your sentences? First, reduce the proportion of “gluewords” to “working words.”⁷ Glue words simply hold the sentence together grammatically; working words are those that carry a sentence’s meaning. The words underlined in Example A are the working words. Unnecessary glue words are eliminated in the reworked version set out in Example B.⁸

Example A: *The ruling by the trial judge was prejudicial error for the reason that it cut off cross-examination with respect to issues that were vital.* (13 glue words/11 working words).

Example B: *The trial judge’s ruling was prejudicial error because it cut off cross-examination on vital issues.* (4 glue words/11 working words).

After eliminating surplus glue words, your next step is to simplify the sentence structure. When you mix substantive information with definitions and qualifications, you can quickly overwhelm your readers. To make the concepts easier to grasp, move them from clauses and phrases into separate sentences. The SEC example below turned one sentence into four.

Before Revision: *The Drake Capital Corporation (the “Company”) may offer from time to time its Global Medium-Term Notes, Series A, Due from 9 months to 60 Years From Date of Issue, which are issuable in one or more series (the “Notes”), in the United States in an aggregate principal amount of up to U.S. \$6,428,598,500, or the equivalent thereof in other currencies, including composite currencies such as the European*

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.

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Currency Unit (the "ECU") (provided that, with respect to Original Issue Discount Notes (as defined under "Description of Notes—Original Issue Discount Notes"), the initial offering price of such Notes shall be used in calculating the aggregate principal amount of Notes offered hereunder).

After Revision: The Drake Capital Corporation may offer at various times up to U.S. \$6,428,598,500 of Global Medium-Term Notes. These notes will mature from 9 months to 60 years after the date they are purchased. We will offer these notes in series, starting with Series A, and in U.S., foreign, and composite currencies, like the European Currency Unit. If we offer original issue discount notes, we will use their initial offering prices to calculate when we reach \$6,428,598,500.⁹

Finally, one note of caution: in shortening your sentences, do not make them uniformly short. You do not want to hypnotize your readers with a monotonous drone, nor distract them with a pounding staccato. Furthermore, even in legal writing, varying sentence length can be an effective tool for emphasis: you can achieve dramatic impact by placing key information in a short sentence that follows longer ones. For example:

Mr. Frick could have avoided the breach by advising the plaintiff of his difficulties. Mr. Frick could have mitigated the damages by searching for replacement parts. He did neither.

All of us need luggage when we travel. The key is to choose the correct bag for the job and to pack it wisely. Often we can make the trip easier if we avoid the portmanteau and replace it with a compact carry on.

NOTES

1. LeClercq, *Guide to Legal Writing Style* 38-39 (Boston, MA: Little, Brown & Co., 1995) [quoting, Kilpatrick, *The Writer's Art* 88 (1984)].
2. DuVivier, "Plain English Part I: Secrets from the SEC," 27 *The Colorado Lawyer* 35 (Jan. 1998).
3. 62 Fed. Reg. 3152 (Jan. 21, 1997).
4. Catton, *A Stillness at Appomattox*, 119-20 (Garden City, NY: Doubleday & Co., 1953).
5. Updike, *Rabbit At Rest* 3 (New York, N.Y.: Alfred A. Knopf, 1990).
6. *Supra*, note 3 at 3156.
7. Wydick, *Plain English for Lawyers* 7, 3d ed. (Durham, NC: Carolina Academic Press, 1994).
8. *Id.* at 9.
9. Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, *A Plain English Handbook* 34 (draft, Jan. 13, 1997).

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