

University of Denver

Digital Commons @ DU

Sturm College of Law: Faculty Scholarship

University of Denver Sturm College of Law

1-1-2004

Vulcan Mind Melds and Picture Windows

K.K. DuVivier

University of Denver, kkdvvivier@law.du.edu

Follow this and additional works at: https://digitalcommons.du.edu/law_facpub



Part of the [Legal Writing and Research Commons](#)

Recommended Citation

K.K. DuVivier, *Vulcan Mind Melds and Picture Windows*, 33 *Colo. Law.* 43 (Jan.2004).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Sturm College of Law: Faculty Scholarship by an authorized administrator of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu,dig-commons@du.edu.

Vulcan Mind Melds and Picture Windows

Publication Statement

Copyright is held by the author. User is responsible for all copyright compliance.

Publication Statement

Copyright is held by the author. User is responsible for all copyright compliance.



THE SCRIVENER: MODERN LEGAL WRITING

Vulcan Mind Melds and Picture Windows

by K.K. DuVivier

© 2004 K.K. DuVivier

“Do you know the secret to persuasive writing?” asked Alan Gilbert. Gilbert, Colorado’s Solicitor General, was speaking to a group of students this fall as part of a guest lecture series for DU’s Lawyering Process Program. “The secret is simple: clear thoughts, explained plainly. You persuade when you put what is in your brain directly into the brains of your readers.”

Brain-to-brain transfer is a helpful visualization for improving your writing. I sometimes call this the “Vulcan mind meld”¹ approach. By touching his fingers to aliens’ brains, Mr. Spock in the “Star Trek” series could read aliens’ thoughts and communicate with them directly, without need for intervening words. Unfortunately, most of us do not have access to this Vulcan tool, so instead of direct communication, we must still work with words. These words can either serve as the medium for facilitating brain connections, or they can stand in the way.

Because our words can both facilitate and block communication, they are much like glass in a windowpane. Just as a window helps us see outside, the words can help our readers see our analysis. But first, we must eliminate three main obstructions to the view: (1) mechanical errors, (2) complex wording, and (3) literary devices.

Mechanical Errors

Any typographical, grammatical, or citation error is a smudge on the window. An occasional small one might be missed, but more may draw readers’ attention away from the view beyond. Furthermore, they serve no useful purpose. They only make readers think the worse of us for not having sufficient pride in our work to keep it tidy. Make the effort to wipe these spots away.

Complex Wording

Some lawyers think it is important to show readers how well educated they are. They insert Latin terms like “*ab initio*” or

“*inter alia*,” or they choose more complex words when simpler words will do, like “acquainted with” instead of “know.”

The words we choose also are like the wood in a window frame. They serve the useful purpose of conveying the meaning, much in the same way wood holds window glass in a frame. On the other hand, if there is too much focus on a complexly carved or multi-paneled frame, the wood can block the view beyond.

Determining how much framing is too much and how much is just right depends on your audience. Lawyers use vocabulary in a way nonlawyers do not. Words like “fungible” or “dispositive” are commonplace to lawyers, but when we use them around my household, my children’s friends protest that we are “speaking in SAT words again.” Although we can assume most readers of legal materials have a post-graduate education and recognize standard legal terms, it is often better to opt for simpler words to avoid any stuffiness or sense of exclusion.²

As a general rule, our readers should not be forced to interrupt their reading and run to the dictionary to look up a Latin phrase or an esoteric term. Sometimes, however, we want readers to stop and notice. In those instances, an unusual word or phrase, such as “penumbra of rights,” has a specific legal meaning. If we substitute simpler words, we may compromise the concept.³ In addition, by causing readers to pause, we can emphasize how these terms connect to a statute or precedent.

In most situations, however, it is best to opt for an unobstructed view—the word that creates a sleeker and simpler window framing. Why not get the maximum light in the least amount of window space?

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.



K.K. DuVivier is an Assistant Professor and Director of the Lawyering Process Program at the University of Denver College of Law.

Literary Devices

Literary devices, such as poetic language or metaphors, can be like a stained glass window—beautiful to see, but blocking any view. In poetry and literature, *how* authors present their work can be as, or more, important than the topics these authors write about. Consequently, the focus is on the writing itself, and good works are beautiful to see. Yet, if the objective is not to gaze at the window, but to focus on the view outside, stained glass windows may fail completely.

In some situations, stained glass windows may be a welcome diversion. If a literary device truly assists in clarifying a legal point, it has a place in a memo or brief.⁴ But, too often, literary devices are more distracting than helpful. When they distract, they draw readers away from the primary objective.

Furthermore, most literary devices require additional space. Space is at a premium in utilitarian documents like a memo or a brief, so writers must balance the benefit of any device with efficiency concerns. While making the reading experience pleasurable is a valuable goal, the reader of a memo or brief is not reading it for pleasure. Instead, the document should serve as a tool for understanding legal concepts. If we can help our readers achieve their goals with less effort, they may have energy to pull out the literature or poetry of their choice when they get home from the office.⁵

Conclusion

Posted on my desk is a card with a view of beautiful, snow-capped mountains, seen through a window. This card is a con-

stant reminder that the most effective writing is like a pane of glass in a picture window. The writing is the only thing between our readers and our message; if we want readers to see the view, we must strive to keep smudges, obstructions, and distractions to a minimum. Our words should be as transparent as clear glass if we hope to achieve our goal of connecting with our audience, brain to brain.

NOTES

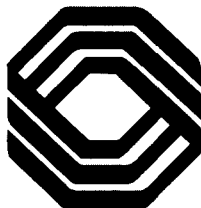
1. Star Trek's creators used the "Vulcan mind meld" device to eliminate dialogue. Vulcans probably realized that words are "highly illogical" because they are so inefficient.

2. "Just because you know what *malum prohibitum* means or what a *habendum clause* does is no reason to use such language at the dinner table. A lawyer should keep in mind that the purpose of communication is to communicate, and this can't be done if the reader or listener doesn't understand the words used." Garner, *The Redbook: A Manual on Legal Style* 157 (West Group 2002) at § 11—"Stuffey Words and Legalese."

3. DuVivier, "Play It Again, Sam: Repetition—Part II," 30 *The Colorado Lawyer* 49 (Nov. 2001).

4. DuVivier, "Misguided Metaphors," 22 *The Colorado Lawyer* 507 (March 1993).

5. It may seem ironic that this entire column consists of similes and metaphors. However, because I hope readers will turn to this column for entertainment more than they would in a utilitarian document that they have no choice about reading, I take the liberty of writing differently for this audience than I would in a memo or a brief. ■



**COLORADO STATE
BANK AND TRUST[®]** N.A.

Downtown 303 861-2111
Cherry Creek 303 318-6000

Cherry Hills 303 318-6070
Highlands Ranch 303 318-6040

TRUST SERVICES

Trust Administration
Estate Settlement Services
IRA and Qualified Plan Administration

Asset Custody Services
Individual Retirement Planning
Complete Banking Services for the Firm

- Professional Investment Management
- Compliance with the Colorado Prudent Investor Act
- Compliance with the Colorado Uniform Principal and Income Act

Specializing in the unique financial needs of Colorado's Legal Community

Proudly supporting COLTAF as a Gold Honor Roll Bank
Actively supporting the Colorado and Denver Bar Associations