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Verb-Based Writing

by K.K. DuVivier
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"Some of our people write horribly. Can you come give a talk to teach them how to write well?" This invitation is one that law firms and professional groups often extend, and it raises for me a recurring dilemma. Writing takes constant practice, attention, and vigilance, so the pursuit of lucid writing must be a lifetime commitment. Many habits form in childhood, and change can be painfully incremental.[1] What can I say in one sitting that would make any difference?

A colleague, who has devoted most of his career to legal writing, has developed an excellent solution. In a recent talk at the University of Denver College of Law,[2] C. Edward Good, author[3] and "writer in residence" at a law firm,[4] delivered a one-hour talk teaching our students that the most efficient way to improve writing is by developing "verb-based style."

Step One—Ferret Out the Verb

The single most important word in most English sentences is the verb.[5] Every sentence must have at least one verb, and if a sentence consists of only one word, that word is usually a verb (for example, "Come." or "Look."). Good advises grabbing a marker to search for the most troublesome verb in the English language, the verb "to be." Read through your writing and highlight each time you use one of the following forms of the verb: "am, is, was, are, were, be, been, being." Good uses the following examples of how "to be" often crops up.

As a Conjugated Verb

- The *SEC* (subject) *was* (form of the verb "to be") the first *agency* (subject complement or predicate nominative) to address the issue.
- The *agencies* (subject) *were* (form of "to be") *instrumental* (predicate adjective) in reducing passengers' injuries.
- The *law firm* (subject) *is* (form of "to be") *near the Metro station* (adverb or adverbial phrase).

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.

As a Helping Verb

- Progressive Tense = Be +"ing" verb (present participle): We *are studying* effective writing.
- Passive Voice = Be + "ed" verb (past participle): The issue *was decided* by the agency. (Note that many past participles do not end in "ed": The movie was *shown* by John.)

Step Two—Revise to Eliminate The Verb "To Be"

The verb "to be" saps the energy from your sentences. It shifts attention away from the actor and the action. A new language called "E-prime" strives to eliminate "to be" in all writing and speaking.[6] Good outlines the following strategies for doing just that.

- *Show "being" through "doing."*
  Example: When you get rid of the verb *to be,* your writing *will be better.*
  Revision: When you get rid of the verb *to be,* your writing *will improve.*
- *Find an actor.*[7]
  Example: There are few cases that *have been decided* on this set of facts.
  Revision: Only a *few courts have decided* cases on this set of facts.
- *Edit out "nouniness" or "nominalizations."*[8]
  Example: It was the court's belief that *proof* of his guilt was not possible.
  Revision: The court *believed* no one could *possibly prove* his guilt.

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- *Use intransitive verbs to show movement or location.*
  Example: She *was still* on the street corner.
  Revision: She *remained* on the street corner.

- *Use linking verbs.*
  Example: A diagram showing the plan *is attached* as Exhibit B.
  Revision: A diagram showing the plan *appears* as Exhibit B.

Step Three—Watch Out for "There is" and "There are."

"It is," "there is," or "there are" clauses are expletives and often clutter a sentence because they serve as surrogates for the noun in the subject position. Good first advises to eliminate them: "Expletive deleted." However, Good alerts his audience to some common mistakes that arise when you do use them.

- *Watch for agreement in number.*
  Example: There *is* too many mistakes going on.
  Revision: There are too many mistakes going on. (The verb should be plural if "mistakes," the noun following the expletive, is plural.)

- *Watch for* that *clauses.*
  Example: It is the belief of the Board *that* this policy is an impediment to successful completion of the project.
  Revision: The Board believes this policy impedes successful completion of the project.

Conclusion

Writing is difficult, and most of us must work hard to improve. Words cannot substitute for the hard work, but sometimes they can have an impact by revolutionizing our perspective. Transform your writing by making a single change: convert to verb-based style.

NOTES

1. DuVivier, "Nothing So Destructive As Habit," 26 *The Colorado Lawyer* 41 (Jan. 1997).
2. A video of the presentation is available at http://www.law.du.edu/lawproc/tutorials.htm.
3. *See* Good, *A Grammar Book for You and I . . . Oops, Me!* (Herndon, VA: Capital Books 2002); Good is the developer of *Lawmanac*, the trademark for the clickable help system for legal writers by © 2003 Grammar.com. For information on site licenses, visit http://www.Grammar.com.
4. Good's title is "Counsel & Writer-in-Residence" for the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, in Washington, D.C. (ed.good@finnegan.com).
5. DuVivier, "Power Verbs," 22 *The Colorado Lawyer* 2369 (Nov. 1993).
6. *See* http://www.generalsemantics.org/Articles/E-Prime_intro.htm. *See also* Murphey, "To Be in Their Bonnets," *Atlantic Monthly* (Feb. 1992).
7. For more on eliminating the passive voice, *see* DuVivier, "Problems With the Passive Voice," 24 *The Colorado Lawyer* 545 (March 1995).
8. Nominalizations are nouns with verb roots, such as agree*ment* (for agree) or assump*tion* (for assume). For more on eliminating these, *see* DuVivier, *supra*, note 5. ■

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HISTORICAL PERSPECTIVES

Charles H. Moyer: Martial Law and the Great Writ

This historical perspective was written by Frank Gibbard, a staff attorney with the Tenth Circuit Court of Appeals and Secretary of the newly-formed Tenth Circuit Historical Society. He may be reached at Frank_Gibbard@ca10.uscourts.gov. The views expressed are those of Mr. Gibbard and not of the Tenth Circuit or its Historical Society. *The author expresses sincere appreciation to Dan Cordova and Catherine Eason of the Tenth Circuit Law Library.*

Habeas corpus *be damned, we'll give 'em post mortems!*
Sherman M. Bell, 1903

Sherman Bell, Commander of the Colorado National Guard, could be an embarrassment at times, even to his superiors. During a 1900 presidential campaign stop in Colorado, Theodore Roosevelt found it necessary to restrain Bell's homicidal rage after a mob surrounded them. [*See* Lukas, *Big Trouble: A Murder in a Small Western Town Sets Off a Struggle for the Soul of America* (NY: Simon & Schuster, 1998) at 225.] With his expensive gold-braided uniform, left hand tucked into his shirt, Bell must have reminded some people of a tin-pot Napoleon. [*Id.*] Colorado Governor James H. Peabody once responded to one of Bell's strident proclamations by stating that he hoped and believed no one would take Bell seriously. [*See Labor Disturbances in the State of Colorado*, S. Doc. 122, 58th Cong., 3d Sess., Vol. 3 (1905) at 213.]

Bell's deficiencies did not keep Governor Peabody from ordering him to Cripple Creek in September 1903 to quell a gold-mine strike. Peabody cited a "reign of terror" in the district. [*Id.* at 175.] Whether there really was a reign of terror is disputed, but Bell certainly became responsible for one after he arrived. He and his troops essentially created a military despotism in Cripple Creek and Telluride. [*See generally* Lukas, *supra*, at 230-31.]

On March 26, 1904, Bell's militia arrested and jailed Charles H. Moyer, President of the World Federation of Miners, in Telluride for "flag desecration." Moyer had printed a poster bearing the headline: "Is Colorado in America?" Below the headline appeared an American flag, each of whose stripes contained a provocative inscription denouncing military rule. [For an account of the facts surrounding the Moyer *habeas* case, *see Labor Disturbances*, *supra*, at 229-46; *see also* Langdon, *The Cripple Creek Strike* (Denver, CO: Great Western Pub., 1904) at 296-307. In Lukas, *supra*, a photograph of the flag poster appears following page 224.] After Bell defied a state district court decree ordering Moyer's release from military custody, Moyer took his case to the Colorado Supreme Court.

Moyer argued that Governor Peabody had no power to suspend the writ of *habeas corpus* or to declare martial law. [*In re Moyer*, 85 P. 190, 192 (Colo. 1904).] Even if the governor had such power, Moyer contended, he had not expressly invoked it in this case, and Moyer's detention was therefore illegal. [*Id.*] The Supreme Court did not resolve these issues. It simply noted that under the Colorado Constitution, "The governor is . . . empowered to call out the militia to suppress insurrection." [*Id.*; *see* Colo. Const. Art. 4 § 5.] Since the Constitution granted this power exclusively to the Governor, the court could not review it. [*Id.*] Moreover, the power carried with it an implicit grant of authority to use "all necessary means" to suppress insurrection. [*Id.* at 193.] The Court placed no explicit time limit on Moyer's detention, which could continue until the Governor determined the "insurrection" was at an end.

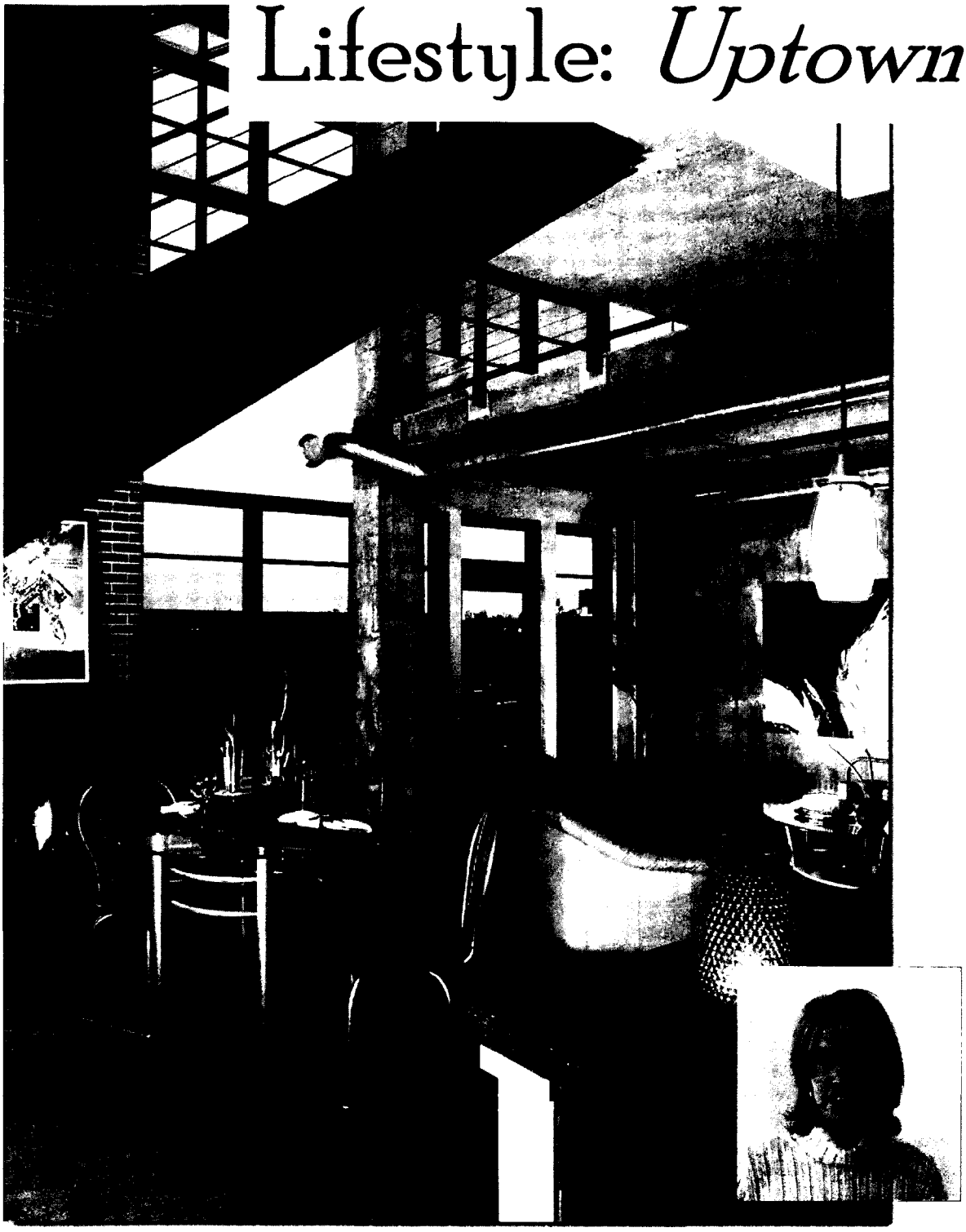
Justice Robert W. Steele filed a forty-six-page dissent. He concluded that the power asserted by Governor Peabody was unconstitutional. If the Governor had unchecked power to declare a state of rebellion, he reasoned, then any citizen could be subjected to arbitrary arrest and detention at the whim of the executive department of government. [*Id.* at 194 (Steele, J., dissenting).]

Moyer was eventually released. He was later re-arrested and charged with the murder of Idaho Governor Frank Steunenberg, but these charges against him were dropped as well, after jurors acquitted other labor defendants in the case.

The post-script to this case came more than twenty years later, during another round of labor disturbances in 1927–28. Once again, the Colorado Governor called out the militia, relying on his power to suppress insurrection rather than an explicit declaration of martial law. This time, it did not work. Judge John Foster Symes of the federal district court concluded that unless martial law had been declared, "no rogatory body can lawfully go around in this state depriving individuals of the rights that the Constitution . . . guarantees." [*U.S. ex rel. Palmer v. Adams*, 26 F.2d 141, 144 (D.Colo. 1927).] The decision of Judge Symes in the *Palmer* case speaks to us with renewed significance today, as courts seek to parse the limits of legitimate executive action in the face of international terrorism.

A biography of Judge Symes can be found in Logan, ed., The Federal Courts of the Tenth Circuit: A History *(Denver, CO: U.S. GPO 1992) at 54-60 and Treece et al., "Six of the Greatest," 19* The Colorado Lawyer *1284 (July 1990). Papers of Governors James H. Peabody and William H. Adams are available through the Colorado State Archives. A useful general history of labor relations in Colorado is Seligson and Bardwell,* Labor-Management Relations in Colorado *(Denver, CO: Sage Books, 1961). For a related civil rights case brought by Moyer against Governor Peabody,* see Moyer v. Peabody, *148 F. 870 (D.Colo. 1906), aff'd, 212 U.S. 78 (1909). An enlightening historical perspective on the use of* habeas corpus *can be found in Rehnquist,* All the Laws But One: Civil Liberties in Wartime *(New York, NY: Vintage Books, 1998).*

Lifestyle: *Uptown*



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