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K.K. DuVivier

University of Denver, kkdvvivier@law.du.edu

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THE SCRIVENER: MODERN LEGAL WRITING

When Flyspecks Matter—Part I

by K.K. DuVivier

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A panda walks into a café. He orders a sandwich, eats it, then draws a gun and fires two shots in the air. "Why?" asks the confused waiter, as the panda makes towards the exit. The panda produces a badly punctuated wildlife manual and tosses it over his shoulder. "I'm a panda," he says, at the door. "Look it up."

The waiter turns to the relevant entry and, sure enough, finds an explanation.

"Panda. Large black-and-white bear-like mammal, native to China. Eats, shoots and leaves."¹

The story above inspired the title of *Eats, Shoots & Leaves*,² a British bestseller on punctuation. Its author, Lynne Truss, includes this story as a dramatic example of how significant an errant comma can be. By adding the comma, the wildlife manual potentially converted "shoots and leaves" into a list of verbs. Instead, the manual intended them as direct objects, nouns serving to show what kind of plant matter the panda eats.

While this example is amusing, everyone knows that, despite the added comma, the wildlife manual was describing the panda's diet. Pandas do not pack guns and, if they did, would not be shooting them in cafés. Thus, instead of reinforcing the author's premise, the panda story may illustrate the weakness of assertions that most punctuation significantly controls meaning.

A Short History of Punctuation

Let's first go into some of the fascinating history of punctuation that author Truss serves up in the book. In the early days of writing, we had only *scripto continua*, roughly translated as "continuous script." With this form of text, the words flow together continuously without spacing between them. Not only were there no divisions between words, but likewise there were no signals for divisions of sentences or within sentences: no initial capitalization and no punctuation. Meaning was entirely dependent on context.³

The Greeks are credited with the earliest known punctuation. Around 200 B.C., Aristophanes of Byzantium created

marks to indicate the length of breaths actors should use in reading text aloud. A shorter bit of text was called a "comma" or, as translated from the Greek, "a piece cut off." In England, the word "comma," which labeled a separable group of words, did not transfer to the current symbol setting apart that group of words until the sixteenth century. Thus, for the first 1,500 years, punctuation did not address syntax, but instead served merely as a form of stage directions to instruct actors and other public readers when to pause or accentuate words.⁴

Modern punctuation, as we know it, sprung from the birth of printing in the fourteenth and fifteenth centuries. At this point, inventive printers began adding symbols such as our modern period and colon to help readers understand printed text.⁵ These symbols evolved over time, and because there is no universal reference for when and where to place them, debates about usage of these marks continue today.

Punctuation Versus Context To Decipher Meaning

Truss conjures up a few examples supporting her argument that these specks on a printed page can significantly change meaning. Here are a couple of her strongest illustrations from the Bible:⁶

Verily, I say unto thee, This day thou shalt be with me in Paradise.

(Interpretation: Christ is saying to the crucified thief that he will go immediately to heaven along with Christ that same day.)

Verily I say unto thee this day, Thou shalt be with me in Paradise.⁷

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.

(*Interpretation:* Today Christ is saying that the crucified thief will get to heaven someday. This leaves open the possibility that the thief must first go to Purgatory to be absolved for his sins.)

Comfort ye my people.

(*Interpretation:* Please go out and comfort my people.)

Comfort ye, my people.

(*Interpretation:* Hey people, cheer up. I'm trying to comfort you.)

Other examples that Truss provides, however, strain to illustrate the significance of the punctuation. As with the panda story, these examples of misplaced commas may make many readers pause, but the commas would not seriously cause readers to misunderstand the meanings of the sentences when they are taken in context. Consequently, when Truss points out that the following two sentences have starkly different meanings, a reader can respond that the surrounding sentences clearly indicate which party believes the other is crazy:

The convict said the judge is mad.

The convict, said the judge, is mad.⁸

Conclusion

Truss notes that punctuation appears to be a dying art in e-mail. Many writers cut punctuation marks out of their text and use the colon, dash, and other punctuation keys only for “emoticons” (this is what Truss calls them), such as the smiley face :-). In addition, some e-mail writers have gone so far as to run words together, effectively “drift[ing] back to the *scripto continua* of the ancient world. . . .”⁹

If punctuation is so critical, how can these writers attempt to communicate without it? The answer is that many writers can toss out punctuation because their context provides their readers with a clear meaning. In these situations, the comma or period may be little more than a flyspeck. When punctuation marks serve no function, to omit them may be efficient because it saves a few keystrokes.

In other situations, however, these flyspecks really do matter. The next column will address some of the discrepancies in how certain punctuation marks are used and the special role punctuation often serves in legal writing.

If you would like to have some fun before the next column, try adding punctuation to the following passage to see how significantly the marks can change the meaning:

Dear Jack I want a man who knows what love is all about you are generous kind thoughtful people who are not like you admit to being useless and inferior you have ruined me for other men I yearn for you I have no feelings whatsoever when we're apart I can be forever happy will you let me be yours Jill¹⁰

NOTES

1. Truss, *Eats, Shoots & Leaves* (New York, NY: Gotham Books, 2003) (book jacket).

2. *Id.*

3. *Id.* at 170.

4. *Id.* at 72.

5. *Id.* at 77-78 (citing Malcom Parkes, *Pause and Effect: Punctuation in the West* (University of California Press, 1990) (giving the main credit to two Venetian printers Aldus Manutius the elder and his grandson of the same name).

6. Truss, *supra*, note 1 at 74.

7. *Id.* at 74-75 (the examples are from Truss, but the translations vary from hers).

8. *Id.* at 97. This illustration is further distorted by the fact that Truss omits the usual quotation marks for the second alternative. Instead, it would usually be as follows: “The convict,” said the judge, “is mad.”)

9. *Id.* at 170

10. *Id.* at 9-10. Here are two alternative answers.

Version 1: *Dear Jack, I want a man who knows what love is all about. You are generous, kind, thoughtful. People who are not like you admit to being useless and inferior. You have ruined me for other men. I yearn for you. I have no feelings whatsoever when we're apart. I can be forever happy. Will you let me be yours?*

Jill

Version 2: *Dear Jack, I want a man who knows what love is. All about you are generous, kind, thoughtful people, who are not like you. Admit to being useless and inferior. You have ruined me. For other men I yearn. For you I have no feelings whatsoever. When we're apart I can be forever happy. Will you let me be?*

Yours, Jill ■

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*This information updates the list printed in the August 2004 issue of *The Colorado Lawyer* at page 28. Please contact Staff Liaison Greg Martin with questions about the Environmental Law Section: (303) 824-5317 or (800) 332-6736; gmartin@cobar.org.