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THE SCRIVENER: MODERN LEGAL WRITING

Learn to Write “Like the Man on the Six O’Clock News”¹

by K.K. DuVivier

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Some readers may have come to recognize a recurring theme in my Scrivener columns over the years: Legal writing is about the communication of ideas, not the writing itself. Your writing should be a transparent medium for those ideas, and you may be failing in your task if your readers focus on your words instead of your message.²

Because writing involves words, it might seem difficult to make your writing “transparent.” However, speaking involves words too, and broadcasters employ several techniques to make their words transparent. Consequently, legal writers can look for guidance from the men and women “on the six o’clock news.”

Accentless Speech

All people speak in dialects. In some parts of the United States, “ya’ll” or “youse guys” are common, but in other parts of the country, these expressions draw negative attention. To avoid this distraction, broadcasters adapt their speech to make it neutral or “accentless.” As television journalist Linda Ellerbee once said, “In television, you are not supposed to sound like you’re from anywhere.”³

Some broadcasters neutralize their accents by adopting the standard form of speaking for a country. For example, in some European countries, “correct” speech is that modeled after the country’s monarch.⁴ Folk etymologists speculate that Castilian Spanish arose from courtiers’ attempts to avoid embarrassing their king by mimicking his lisp.⁵ Similarly, the “King’s English” became the standard for proper English usage and grammar in early twentieth century England,⁶ and the label for “educated spoken English” converted to the “Queen’s English” when Elizabeth II ascended to the throne. Consequently, to be neutral, British Broadcasting Corporation announcers traditionally use the Queen’s English for their broadcasts.⁷

We in the United States have no monarchs to mimic. However, many of our notable media personalities work on achiev-

ing a similarly neutral standard for speaking American English so that most Americans will perceive their speech as accentless. Linguists label this type of speech as “General American English.”⁸ General American English derives from the central regions of the United States and is the form used by many notable newscasters, such as Walter Cronkite, Tom Brokaw, and Paula Zahn.⁹ Because this form of speech is perceived as neutral, it does not draw attention to the speaker in ways that other regional and social group accents do. General American is less defined by specific forms of speaking than it is “marked by a lot of things [it] does *not* do.”¹⁰

Accentless Legal Writing

Following the lead from the broadcast industry, you can make your legal writing accentless by *not doing* things that will distract legal readers. First, with respect to tone: most legal writing is formal. Do not use contractions and colloquialisms.¹¹ Also, do not use first person pronouns in standard legal writing, so as to avoid too much familiarity.¹²

Second, here are some suggestions for making your style accentless. It is not technically incorrect to start a sentence with a conjunction, but many readers were taught otherwise and may be distracted if you do so.¹³ Similarly, you may not be breaking any grammar rules if you end a sentence with a preposition or use a split infinitive, but again some readers might believe it is incorrect; if you do so, they may question your competence.

The last four Scrivener columns attempted to identify a standard form for legal analysis.¹⁴ Although reader responses varied, a few key distractions emerged. Avoid the overuse of defi-

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 Associate Professor and Director of the Lawyering Process Program at the University of Denver Sturm College of Law.

nitions; readers do not need a label unless there could be confusion. String citations can put off readers, especially if they are used in an introductory paragraph where readers do not feel any citations are necessary. Do not use parentheticals, especially when they are complete sentences that can stand on their own. Finally, the majority of readers preferred some repetition of precedent facts when describing how they impact a client's facts, but they were irritated by too much unnecessary detail and too little of the details and reasoning that were key to the comparisons.

Conclusion

Any accent—spoken or written—may be appropriate in its original context; however, it can be distracting in other contexts. Follow the age-old advice for any writers: Know your audience and adjust your writing to most effectively communicate with that audience. If your audience is broad and varied, follow the lead of newscasters—learn to recognize the forms, usage, and techniques that distract and *do not use them*. If you can make your writing accentless, the words will simply be background and the content of your message will stand out in clear relief.

Youse guys capisce? 'Cause I want ya'll to get this right. Ya hear?

NOTES

1. Don Williams, *Anthology*, "Good Ole Boys Like Me," compact disc (Hip-O Records, Oct. 17, 2000) ("But I was smarter than most, and I could choose, I learned to talk like the man on the six o'clock news.").

2. See, e.g., K.K. DuVivier, "Vulcan Mind Melds and Picture Windows," 33 *The Colorado Lawyer* 43 (Jan. 2004); K.K. DuVivier, "Gender Neutral II," 21 *The Colorado Lawyer* 2373 (Nov. 1992); K.K. DuVivier, "Gender Neutral," 21 *The Colorado Lawyer* 1873 (Sept. 1992).

3. See http://en.wikipedia.org/wiki/General_American.

4. The development of the King's or Queen's English can be traced to the 16th and 17th centuries, when the monarch's speech was considered the model. It was at this time that the aristocracy began to develop a prestigious form of speech to mirror the monarch. See <http://www.ic.arizona.edu/~lsp/QueensEnglish.html>.

5. Some speculate that this king was Felipe V or Carlos V; however, romance language experts believe the Castilian pronunciation originated during the Vulgar Latin period long before these kings. See <http://www.antimoon.com/forum/t1683-0.htm>.

6. See, e.g., Fowler, *The King's English* (Oxford, UK: Oxford University Press, 1906).

7. Because the Queen's English is commonly used by the British Broadcasting System ("BBC"), it also is sometimes labeled "BBC English" or "Received Pronunciation." See <http://www.wikipedia.com>.

8. Cox, "Why we talk like we do," *The Denver Post* 1F (April 17, 2006), available at http://www.denverpost.com/ci_3715138?source=rss.

9. General American also is the form used by former *Tonight Show* host Johnny Carson. "General American" sometimes also is called "Standard Midwestern," because it represents that part of the country. See http://en.wikipedia.org/wiki/General_American.

10. William Labon, co-author of *Atlas of North American Speech: Phonetics, Phonology, and Sound Change* (Berlin, Germany: Mouton De Gruyter, Dec. 2005), quoted in Cox, *supra* note 8 (emphasis added).

11. See, e.g., Slocum, *Legal Reasoning, Writing, and Persuasive Argument*, 2nd ed. (New York, NY: Matthew Bender, 2006) at 251.

12. *Id.*

13. See, e.g., Ray and Ramsfield, *Legal Writing: Getting It Right and Getting It Written*, 4th ed. (Eagan, MN: Thomson West, 2005) ("[A]lthough it is not wrong to start a sentence with *and*, doing so draws attention to the word.").

14. K.K. DuVivier, "Beholder' Reflections—Part III," 35 *The Colorado Lawyer* 99 (Sept. 2006); K.K. DuVivier, "Beholder' Reflections—Part II," 35 *The Colorado Lawyer* 93 (July 2006); K.K. DuVivier, "Beholder' Reflections—Part I," 35 *The Colorado Lawyer* 95 (March 2006). ■

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FROM OUR READERS



Poetry Contest

Dear Editor:

What a disappointment! After waiting almost five months to read some poetry by Colorado lawyers, there were only a couple that could be called poetry. [See "The Colorado Lawyer Poetry Contest," 35 *The Colorado Lawyer* 33 (Sept. 2006).] Poetry is metrical verse, not prose including stream-of-consciousness rambling, psycho-babbling, or random mental meanderings just because it is written in lines shorter than the width of the page. It wasn't even clear which were winners in which of the categories set out in the original notice, and some certainly exceeded 32 lines.

I'm sure—at least, I am hoping—that better entries of real poetry were received. The "new" poetry appears to be the result of a school by those who could not make the grade otherwise so decided to make up their own rules, sort of like shooting and then painting a bull's eye around the bullet hole.

This type of composition—which hides behind the catch-all facade of "avant garde creative writing" so it will be unassailable—may have its place, but I never expected to see it masquerading as poetry. Such prose appears in good magazines such as [*The*] *New Yorker*, but they do not label it poetry. As poetry, it's another case of the emperor's new clothes. Now, it seems, real poetry has gone the way of good manners, graciousness, and common sense.

I'm sorry your poetry contest didn't turn out better. It seemed like a good idea. Perhaps you should have judged the entries



yourself. Experts have been compared to the bottom part of double boilers: they get all hot and steamed up and bubbly, but they don't know what's cooking.

Sincerely,
Carl M. Wright,
Boulder

Dear Mr. Wright:

Thank you for your comments about *The Colorado Lawyer* Poetry Contest. We welcome reader feedback and hope your remarks will inspire others to comment, as well.

We were very pleased with the level of participation in the contest: we received 178 submissions. Copious thanks to you and to all of the creative lawyers who shared their talent. Many of the poems we received were well-conceived, poignant, clever, entertaining, and well-written. I, for one, feel fortunate to have been able to read them.

I stand by my selection of the six esteemed individuals who served as contest judges. They gave of their personal time and literary expertise to review poetry by Colorado attorneys. All were serious and conscientious regarding their accepted duty. These qualified individuals continue to read, write, and teach about the "heightened language and rhythm" called Poetry. I hold them in high regard and thoroughly trust their individual and collective effort on our behalf. I am forever grateful for their service.

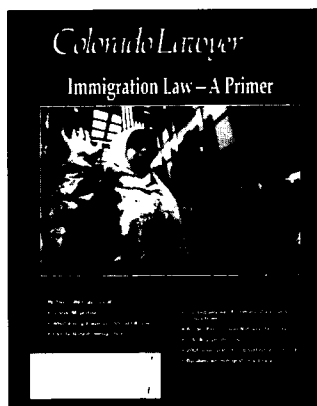
Leona Martinez
Managing Editor

Immigration Law

Dear Editor:

The seven articles were great—easy to understand for somebody like me that knew very little. [See "Immigration Law—A Primer," 35 *The Colorado Lawyer* 21 (Oct. 2006).] Also very informative and timely. A great way to earn a few CLE credits. Thanks.

Ken Lind,
Greeley



READERS

We encourage letters about articles published, Bar projects, and suggestions for improvements to the journal for consideration by *The Colorado Lawyer* Editorial Department and Board of Editors. Some letters will be published in this space or used for long-range planning for both the Colorado Bar Association and *The Colorado Lawyer*. We obtain express permission before publication from letter writers. Please contact us with your comments.

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